

THE U.S. CONGRESS EITHER OVERREACTS OR UNDERPERFORMS:

**THE U.S. POSITIVE TRAIN CONTROL MANDATE, NEGLECTED HIGHWAY
POLICY, AND HOW TO IMPROVE THE FIRST BRANCH OF GOVERNMENT**

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Abstract

Why, when, and how does Congress pass legislation? John Kingdon theorized in *Agendas, Alternatives, and Public Policies* that the U.S. Congress is unlikely to act on major public policy issues unless there is an event to focus the public's attention. Compelled to act in the window of opportunity after a focusing event, Congress is likely to enact hastily considered policy, particularly if a proposed policy solution is already on the minds of legislators. Thus, the Congress typically either overreacts in passing legislation, or underperforms by doing nothing at all.

The Kingdon theory is tested against the 2008 enactment of the Positive Train Control railroad technology mandate and found to hold strong predictive value. The theory is then tested against examples of the Congress's unwillingness to raise excise taxes on gasoline to fund transportation programs or increase federal truck weight limits. Again, the theory is found to be valid, especially when informed by other studies of Congressional action.

Lastly, recent scholarship on the Congress, and interviews with individuals with professional and academic experience with Congress, inform a discussion of what could be done to strengthen Congress so that it achieves better public policy outcomes. The lasting utility of Kingdon's theory suggests its conclusions and lessons should inform any effort to improve Congress.

Everyone would be well served by a Congress with the capacity to enact carefully considered policy in a timely manner. The thesis identifies and examines

several elegant solutions available to enhance the Congress's ability to make informed, rational policy decisions. The thesis finds that the degree to which members of the U.S. House and Senate feel politically vulnerable, a modern media climate that monetizes outrage, low institutional capacity for policy development, and counterproductive lobbying regulations contribute to the Congress's tendency towards either stasis or impulsive activity.

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Introduction

How, when, and why does Congress takes action on major policy issues? Is it because the people they represent want a new law? Are laws made after careful, timely consideration of the various policy options? John Kingdon theorized in *Agendas, Alternatives, and Public Policies* that the U.S. Congress is unlikely to act on major public policy issues unless there is an event to focus the public's attention. Acting under duress while public attention is focused on the Congressional response to the issue of the day, short-term political objectives supersede long-term policy concerns. Compelled to act in the window of opportunity after a focusing event, good governance is relegated to second-tier status, while any obvious policy that will resolve political tension wins the day. The problem is the obvious solution is not necessarily the best. The Congress is most likely to enact imprudent policy if that proposed solution is already on the minds of legislators as a potential quick-fix. Thus, the Congress is most likely to address pressing public policy issues in a haphazard manner, under a tight timeline. Likewise, it is unlikely to move on important policies unless there is an event to focus public attention. As a result, Congress typically either overreacts in passing legislation, or underperforms by doing nothing at all.

The answers to the basic questions of how, when and why Congress takes action are essential for understanding the development and enactment of American public policy. They also have implications for how the American government is able to effectively function as a representative institution that is responsive to the needs of its

people. The following portfolio is an examination of how several leading theories and models of Congressional activity can inform answers to these essential questions.

In particular, this portfolio tests a theory put forth by John Kingdon in the mid-1980s founded upon his hands-on experience researching Congress. *When* will the Congress act? Kingdon found the Congress is most likely to enact significant if pushed to do so. In his words, “that push is sometimes provided by a focusing event like a crisis or disaster that comes along to call attention to the problem.”¹

How will they act? Kingdon found the Congress is most likely to act swiftly on major issues in the wake of a focusing event and under duress from the related political pressure they experience. The potential solutions on the agenda are those which government officials, and people outside of government who maintain contact with those officials, consider legitimate.² Presidents, Cabinet Secretaries, Committee Chairmen and individual members of Congress can only conceive of a limited set of policies at a given time. Thus, since Congress is most likely to act in the wake of a focusing event, from an interest group’s perspective, being on the agenda ahead of time is a key for success.

Why do they act? Kingdon, Mayhew, King, Arnold and others observe that the degree to which American politicians feel politically vulnerable explains their motivation for taking official actions, up to and including passing legislation.³ In short,

¹ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 94-95.

² Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 3.

³ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 94-95;

the Kingdon theory answers a fundamental question: what makes it onto the Congressional agenda and what does it take for items to be cleared from that agenda?

This portfolio evaluates the validity of this thirty-year-old theory in light of several recent transportation policy cases. It finds the theory continues to hold strong predictive power for the behavior of the contemporary U.S. Congress in the context of the policy examples evaluated.

The portfolio also responds to the primary criticism of Kingdon's theory; specifically, that it tries to explain too much about the major activities of a large institution. That is, it suffers from its own excess: by attempting to explain everything, it ends up explaining almost nothing, and is therefore of little use for people who are trying to understand the timing and motivation of Congressional activity.⁴

The portfolio concludes that despite the general nature of the theory, it continues to hold strong predictive power that provides an important high-level of understanding for intuitions, industries and individuals impacted by the decisions made by the U.S. Congress. In other words, anyone whose makes it their business to understand the Congress would be well advised to understand the Kingdon theory and keep it in mind when preparing to engage the Congress as an advocate, work there as a politician or staffer, or simply thrive as a business that must follow U.S. law.

Mayhew, David R. "Observations on "congress: The Electoral Connection" a Quarter Century After Writing It". *PS: Political Science and Politics* 34. (2001): 256; King, Anthony. "The Vulnerable American Politician". *British Journal of Political Science* 27. Cambridge University Press. (1997): 1; Arnold, R D. *The logic of congressional action*. New Haven: Yale University Press (1990): 10.

⁴ Brodtkin, Evelyn. "Review of Agendas, Alternatives, and Public Policy". *Political Science Quarterly* 100, no. 1. (1985): 166.

Method and Procedure for Evaluating the Kingdon Theory

The first chapter explains the theory in great detail, tests it against several recent transportation policy examples and finds that the theory is valid and has strong predictive power. An examination of the relevant literature and history finds Kingdon's theory would have predicted that in 2008, after a major accident focused Congress' attention on railroad safety, they mandated that railroads install Positive Train Control (PTC) technology by a date certain. It would also have accurately predicted that the ultimate policy outcome was hastily considered, with greater emphasis placed on short-term political expediency than orderly policy choices. As a result, in the years following the mandate, the Congress and Executive Branch were forced to deal with interagency coordination problems, a protracted rulemaking process, and predictable technology delivery delays that ultimately forced the Congress to revise and extend the PTC implementation deadline.

The flip side of the Kingdon theory is the prediction that the Congress *avoids* taking action on major policy items unless the public pressure raises the saliency of an issue. The second chapter of this portfolio concludes that the Kingdon theory, again, is useful in its ability to predict when Congress will *not* take action. Specifically, it evaluates two decades of Congress's refusal to find a sustainable funding source for the Highway Trust Fund that funds federal surface transportation programs, and a series of actions in 2011 that resulted in the Congress refusing to increase truck weight limits on federal highways. Again, it finds the Kingdon theory — particularly when considerations

of political vulnerability in the contemporary political context are considered—would predict these outcomes. As the Kingdon model would envision, the chapter finds inaction results from a lack of an event related to these highway policies that is significant enough to compel members of Congress to set aside their politically defensive posture in order to take action. Additionally, the chapter determines that the agenda-setting role of well organized outside interest groups in these policy examples aligns with the Kingdon theory.

The third chapter examines the policy implications of the conclusion that the Congress is most likely to act either under duress (i.e. the PTC mandate), or not at all (i.e. the gas tax and truck weight limits). In the crudest sense, the theory holds that, acting in the shadow of a crisis, the Congress is likely to approve policies on the basis of political optics and a desire to appear responsive, rather than on the merits of the particular policy.⁵ Next, it considers leading suggestions for strengthening the Congress as an institution, so that it might become more capable of enacting wise, well considered policies when the next crisis strikes. The chapter examines the policy implications of the gerrymandering of Congressional districts. It then sheds light on the Congress's lack of institutional capacity for policy development in terms of personnel and financial resources. It then describes the modern media climate, which rewards politicians for playing to the extremes in policy debates and is largely indifferent when Congressmen take political risks to enact wise policy. From there, it delves into how the contemporary regime for regulating activities expressly protected by the First Amendment (lobbying

⁵ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 58.

Congress) has only served to strengthen the influence of the most powerful interests, further marginalized smaller interests, and groundlessly eroded public trust in the Legislative Branch. It then moves to an examination of the decline in personal interaction among members of Congress. Lastly, there is a discussion of who is best positioned to lead any efforts to address these problems.

The ultimate conclusion of these tests and an examination of the related implications is that Kingdon's theory, despite its broad reach, is worthy of consideration by anyone interested contributing to an effort to make the U.S. Congress a stronger and more responsive representative institution.

Interviews with Practitioners Provide Unique Insights

The activities of the U.S. government and the related political intrigue are the subject of more conversation and speculation than perhaps any other single subject in America. Just about everyone in America has some sort of theory or opinion about what is "really" going on in Washington. Everyone from your cab driver, to your grandfather, to your boss, to your undergraduate political science professor has an opinion. But the fact is some opinions are more valuable than others.

This portfolio contains hundreds of references to the work of professional, academic scholars of Congress. Their rigorous research into the observable trends, historical context and theoretical understandings of this complex institution are

invaluable. However, most of these researchers draw conclusions⁶ about what is “really” going on in the “back rooms,” despite having little or no actual experience working in or alongside the Congress in those rooms. Therefore, the author sought input from the day-to-day practitioners of Congressional politics to fill in some of the information gaps that exist.

Throughout the following discussion, excerpts from interviews with current and former politicians, Congressional staff, and lobbyists (some of whom fall into more than one of those categories) provide supportive “color commentary” and anecdotal evidence based on personal experience, for the phenomena identified by the academics. The author interviewed more than twenty of these professionals for this research. The interview subjects come from an array of political and professional backgrounds, from former leading Republican politicians, to current Democratic staffers, to career non-partisan professional lobbyists. Their perspectives are informed by real world experience and provide an fuller understanding of how congress actually behaves. Several especially insightful responses to the question of what contributes to the seemingly manic nature of the modern Congress are included at the start of major sections. Due to the public nature of this profession and sensitive subject matter, some asked to not be referenced by name. While their statements should be taken as anecdotal, their insights are nonetheless important and valuable to a complete understanding of how the Congress makes decisions.

⁶ Baumgartner, Frank R., Jeffrey M. Berry, Marie Hojnacki, David C. Kimball, and Beth L. Leech. *Lobbying and Policy Change: Who Wins, Who Loses, and Why*. Chicago: University of Chicago Press. (2009): 15.

Implications and Conclusions

The implications of Kingdon's theory have been widely examined. As political scientists, commentators, and just about anyone paying half-attention to the American political process knows: the problems associated with the Congressional agenda-setting are neither new nor unusual in American politics. Indeed, the tendency to vacillate between stasis and clearing agenda items identified by elite factions when the public demands action are built in to the Constitutional system.⁷ However, this portfolio concludes that these drawbacks of an otherwise wonderfully elegant and competent political system are exacerbated by the various constraints on today's Congress's ability to operate. While almost every conceivable factor that could limit the institution's ability to craft and enact wise policy has increased, America, its culture and economy continue to grow ever more complex, desperately in need of thoughtful leadership.

Personal Disclosure

The author's interest in this subject goes beyond academic intrigue. The author is a former staffer in the House of Representatives who served for a member of the Transportation and Infrastructure Committee when the PTC mandate was enacted. That service was followed by six years as an advocate and lobbyist for the railroad industry as it survived an economic crisis in the highly competitive transportation industry, while struggling to comply with and ultimately delay the implementation date of the unprecedented technology mandate. He now works for a manufacturing and technology

⁷ Hamilton, Alexander; Madison, James; and Jay, John. *The Federalist*. Edited by Jacob E. Cooke. Middletown, Conn. Wesleyan University Press. (1961).

company that is a supplier to the rail industry. It is the author's hope that the following is an impartial examination of the relevant historical and theoretical facts and their implications. Rather than potentially prejudicing the research, the author believes his professional experience, combined with disciplined academic research, provides a unique perspective on these issues that informs the reader.

Chapter 1

The Positive Train Control Mandate: John Kingdon's Theory of Congressional Action Predicted the Congressional Response to Railroad Accidents

Distraction, Death and Destruction in California

On September 12, 2008, a Metrolink commuter train full of passengers was on its way to a station in Chatsworth, California. Tragically, the train's engineer was texting on his cell phone while operating the train and did not notice a red light signal directing him to stop the train to allow a Union Pacific freight train to pass along a single track. As the Metrolink engineer looked at his phone's screen, his train collided head-on with the stationary Union Pacific locomotive, killing him and 24 of the train's passengers, and injuring 135 others.⁸ Within days, the National Transportation Safety Board (NTSB) reported that if a technology system known as Positive Train Control (PTC) had been in place, the accident would not have occurred.⁹ Three years earlier, the NTSB determined PTC could have prevented a train crash near a textile mill in Graniteville, South Carolina.¹⁰ In that accident, ten people were killed and 250 were injured when a train passed through a misaligned switch, derailed and ruptured several cars which released

⁸ Rubin, Joel, et al. "Total destruction: At least 17 die in head-on metrolink crash." *Los Angeles Times*. September 13, 2008.

⁹ National Transportation Safety Board Railroad Accident Report on Collision of Metrolink Train 111 With Union Pacific Train LOF65-12 in Chatsworth, CA on September 12, 2008. NTSB/RAR-10/01. January 21, 2010.

¹⁰ National Transportation Safety Board Railroad Accident Report on Collision of Norfolk Southern Local Train P22 with Subsequent Hazardous Materials Release at Graniteville, SC on January 6, 2005. NTSB/RAR-05/04. June 15, 2006.

toxic chlorine gas. If the accident had occurred while the textile mill was in operation, hundreds more may have died.

In light of these horrific accidents, a thorough investigation and measured response by federal authorities with jurisdiction over railroad safety was in order. Unfortunately, this did not happen. Instead, the Congress reactively enacted a mandate to require the installation of PTC on any rail lines used to transport passengers or toxic-by-inhalation materials by December 31, 2015.

This chapter explores the facts surrounding the above mentioned railroad accidents and examines the extent to which the subsequent Congressional response aligns with John Kingdon's theory of Congressional action. After describing the facts of the railroad accident, it explains Kingdon's theory and the value of evaluating it against this recent policy example. Next, through careful examination of the relevant factors and other theories of Congressional activity, it determines the Congressional response of mandating a specific safety technology fits the Kingdon model. Then, there is a discussion of how the Congress at the micro and macro levels realizes political benefits from reacting to perceived crises. The chapter determines that in this case, even though the Congress's policy solution was so flawed that it had to be revised, the members who supported the flawed policy were able to achieve a second round of political victories in the process of fixing the policy. This bolsters an understanding of why the Congress behaves in the way Kingdon describes. The ultimate conclusion of the chapter is that the

Congressional response to a focusing event in this railroad policy example fits Kingdon's theory of Congressional action.

In short, this chapter answers fundamental questions about the First Branch of Government: What factors influence the timing, rationale and specifics of lawmaking in the U.S. Congress? Do they act because the people they represent want a new law? Or perhaps laws are made after careful, timely consideration of the various policy options. These questions surrounding Congressional action are a key issue facing many American industries, including the railroads.

Railroads and Congress

As one of the first modern American industries, the freight railroads have more than one hundred years of experience with significant federal government safety regulation. As such, the importance of Washington representation is well understood by railroad management. In fact, historically railroads provided Congress with opportunities, "...to form a foundation for regulating interstate commerce, and it provided the Supreme Court with cases that would establish judicial precedence used in decisions for decades to come. The effects of railroads in the United States are found in the historical roots, and the structural branches, of the federal government."¹¹ So it is no surprise that the railroads were one of the first American industries to organize an effective, coordinated lobbying operation.

¹¹ Black, David. "Testing the Streams Theory of the Public Policy Process Using Three Case Studies in the Field of U.S. Freight Rail Policy." Thesis for The Johns Hopkins University Master's Program. (2011): 2.

Initially, the railroads began to coordinate their activities out of necessity.

Historian Douglass Michael notes that, “In the 1870’s, advocates of standardization began to make themselves heard in railroading circles. The Civil War had brought about the first large scale interline movement of goods, and consequently, had demonstrated the consequences of non-uniformity...As interline freight movements grew, it became evident that some more universal method of interchanging freight cars was necessary.”¹²

In 1872, the general managers of the nation’s largest railroads met in Louisville, Kentucky at what is now known as the Time Table Conventions, to develop standardized time zones in the U.S. and Canada, in an effort to end the confusion of dealing with thousands of local times.¹³ This group of managers soon formed the American Railway Association (ARA), and in October 1934 the ARA and several other railroad trade groups merged to form the Association of American Railroads (AAR).¹⁴

Today, as in the 1930s, Washington representation of the rail industry is one of the missions of the AAR. The AAR is known as a powerful force in Washington, DC.¹⁵ Since railroads operate in almost every state and congressional district, where they provide high-quality employment and offer a critical service for leading businesses, the rail industry has a significant platform from which to advocate for its interests.

Furthermore, since federal law and regulations impact most railroads similarly, the AAR

¹² Douglass, Michael. “A History of the Association of American Railroads.” University of Pennsylvania. (1962): 2.

¹³ Roemmele, Brian. “How, When, and Why Were Time Zones Created?” *Huffington Post*. September 17, 2014.

¹⁴ Douglass, Michael. “A History of the Association of American Railroads.” University of Pennsylvania. (1962): 74.

¹⁵ Spencer, Jim. “ReRoute Oil Trains? History Suggests It’s a Long Shot.” *Minneapolis Star Tribune*. March 21, 2015.

does not suffer from infighting and a lack of direction from its Board of Directors—an affliction that paralyzes some trade associations, rendering them ineffective.¹⁶ In fact, during a hearing of the Senate Commerce Committee in 2010, Chairman Jay Rockefeller (D-WV) stated, “The AAR is the most powerful trade association in Washington; they put the NRA to shame.”¹⁷ In 2015, as the Congress prepared to extend the Positive Train Control implementation deadline, Senator Barbara Boxer (D-CA) stated:

By the way, I like to work with the railroads because they do a lot of good things. They are very powerful, they are very strong, and they have a very powerful lobby. It is not a Republican lobby or a Democratic lobby. It is a lobby that covers everybody.¹⁸

Given the purported power of the railroad lobby, one might imagine, in the crudest sense, the AAR to be an army of lobbyists controlling the official activities of members of Congress. One might find it difficult to envision a situation in which the industry is slapped with a mandate to install a theoretical, non-existent, unproven technology system that could potentially offer safety benefits in only a tiny fraction of rail accidents, with a price tag exceeding \$10 billion. All of those assumptions are wrong: the railroads were forced to install an advanced, satellite-based PTC –technology that was only theoretical at the time. Let’s see if a political theory might help us understand how this happened—and if the railroad executives might have anticipated some sort of knee-jerk Congressional reaction the moment they heard about the Chatsworth accident.

¹⁶ Drutman, Lee. *The business of America is lobbying : how corporations became politicized and politics became more corporate*. Oxford New York, NY: Oxford University Press (2015): 139.

¹⁷ Rockefeller, John. U.S. Congress. Senate Commerce, Science, and Transportation Committee Hearing, *The Federal Role in National Rail Policy*. 111th Congress, 2nd sess. September 15, 2010.

¹⁸ Boxer, Barbara, speaking on “Positive Train Control”. 114th Congress, 1st sess. *Congressional Record-Senate*. (October 28, 2015): S7577.

Why Evaluate Kingdon's Theory?

A theory's usefulness can be judged by its utility in helping us better understand the phenomena we observe and its power to predict future events. In his landmark 1984 treatise on how public policy is made in Washington, John Kingdon laid out a theory of how, why and when Congress acts. Rather than getting bogged down in the details of Congressional organization and personalities, he asks and answers a more fundamental question: how does an idea's time come?¹⁹ In other words, what makes it onto the Congressional agenda and what does it take for items to be cleared from that agenda? His simple conclusion is that Congress needs to be pushed before it will take action. As Kingdon puts it, "that push is sometimes provided by a focusing event like a crisis or disaster that comes along to call attention to the problem."²⁰

One of the most elegant aspects of Kingdon's theory is that it is immune to "reform," or other changes to the Congress. It holds regardless of how many committees and offices there are,²¹ or whether lobbyists have to register and report their activities. The theory is not static: we can expect it to hold true regardless of which party controls the gavels or the strength of the personalities in leadership. Although the theory has been criticized for being too imprecise and dismissive of the rational-actor and incrementalist models,²² the shunning of these revered and formal models of

¹⁹ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 1.

²⁰ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 94-95.

²¹ U.S. Congress, Office of Technology Assessment, *The OTA Legacy: 1972-1995* (Washington, DC: April 1996); A reference to Public Law 110-81, the Honest Leadership and Open Government Act.

²² King, Anthony. "Review of *Agendas, Alternatives, and Public Policies*." *Journal of Public Policy* 5, no. 2 (1985): 282.

understanding politics may be what makes this “general” theory so useful. Politics is a complicated business with countless unknown variables; devising a formula to predict future political events is likely impossible. So with that in mind, Kingdon did the next best thing: he described *focusing events*, something of a compass to look to for direction or guidance. A compass will not direct a person home, but it will give a bearing. And even though the compass does not point to true north, one can get close enough to have an idea of what might come next on the trail. Unconvinced? Keep reading. This chapter will run the theory through the story of the PTC mandate as a test case.

Another reason Kingdon’s work is worthy of thoughtful and continued consideration is that he did not develop his theory from a perch in the ivory tower of a university library. Nor did he do it an ocean away, enmeshed in a completely separate political society.²³ His study is based on 247 lengthy and detailed interviews with congressional staff, executive branch political appointees, and upper-level civil servants and presidential staff in 1976, 1977, 1978, and 1979.²⁴ This author is not interested in theories that simply sound good in a university lecture hall. The only theory that is worth consideration is one that is based on real-world experience and designed to interpret and predict real-world events.

Even if Kingdon’s theory is too general for some to deem worthy of consideration, at least it compliments other well regarded theories of congressional operations. For instance, it aligns well with David Mayhew’s classic work in

²³ Anthony King penned his criticism of Kingdon’s theory from the University of Essex in England.

²⁴ Wirth, Clifford J. Review of *Agendas, Alternatives, and Public Policy*. *The American Political Science Review* 79 Cambridge University Press. (1985): 213.

demonstrating that Congress can be analyzed by simply assuming that all Congressional activity can be understood through a simple lesson: that the electoral imperative shapes the design and activities of the institution.²⁵ In other words, Kingdon's theory that individual members of Congress can only be motivated to act in unison in the face of focusing events compliments Mayhew's notion that these individual members are acting based on their own electoral concerns. Mayhew cited an illustrative quotation from the late Senator William B. Sachse (R-OH) that, "Most [members of Congress] are willing only to follow those things that will protect them and give them the coloration which allows them to blend into their respective districts or their respective states. If you don't stick your neck out, you don't get it chopped off."²⁶ Ignoring a highly public, focusing event would be the equivalent of a sticking one's proverbial neck out.

Mathew McCubbins and Thomas Schwartz uncovered a phenomenon similar to Kingdon's theory of how legislation is enacted, regarding the way the Congress conducts its oversight function. Their 1984 study pushes back against the contemporary assumption that Congress largely neglects its oversight function. Instead, they demonstrate that what many political scientists interpreted as a dereliction of oversight duties is actually, "...a preference—an eminently rational one—for fire-alarm oversight."²⁷ Fire-alarm oversight refers to waiting for someone other than Congress (i.e. individual citizens and organized interest groups) to "pull the alarm" on violations of

²⁵ Mayhew, David. "Observations on 'Congress: The Electoral Connection' a Quarter Century after Writing It." *PS: Political Science and Politics* 34.2 (2001): 251-2.

²⁶ Mayhew, David R. *Congress: the electoral connection*. New Haven, Conn: Yale University Press. (2004): 11.

²⁷ McCubbins, Mathew D., and Schwartz Thomas. "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms." *American Journal of Political Science* 28, no. 1 (1984): 176.

legislative goals, as opposed to police-patrol oversight in which Congress would regularly examine how agencies are carrying out Congressional intent.²⁸ Whereas Kingdon found members of Congress are prone to utilizing their legislative power in response to a crisis, McCubbins and Schwartz point out that members of Congress also utilize their oversight power in response to a crisis.

Before continuing, it is important to recognize the limitations of attempting to fit a complicated series of human events into a tidy political theory. That is not this author's intention. As Mayhew observed in critiquing his own study of Congressional activity, "political reality is very complicated..." and no single view of this activity can explain everything.²⁹ And certainly other theories and methods of interpreting Congressional activity offer valuable insight into this particular series of events. Certainly Anthony King's theory that the high degree of electoral vulnerability faced by American politicians—contested primary elections in the case of the politicians in this case—result in, "the high incidence in America of purely symbolic politics, the drastic foreshortening of American politicians' time horizons and the difficulty that the American system often has in taking tough decisions"³⁰ contributes to, rather than detracts from, Kingdon's theory. This is particularly true in the PTC example, as outlined below. These and many other interpretations of Congressional activity are likely useful in understanding how

²⁸ McCubbins, Mathew D., and Schwartz Thomas. "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms." *American Journal of Political Science* 28, no. 1 (1984): 166.

²⁹ Mayhew, David R. "Observations on "congress: The Electoral Connection" a Quarter Century After Writing It". *PS: Political Science and Politics* 34. (2001): 256.

³⁰ King, Anthony. "The Vulnerable American Politician". *British Journal of Political Science* 27. Cambridge University Press. (1997): 1.

the PTC mandate came to be. But this chapter examines how far Kingdon's theory can take us in understanding the imposition of the PTC mandate.

Does the PTC Mandate Follow Kingdon's Model?

When, how and why was the PTC mandate enacted? Was the timeline for installation of this new technology realistic? When, how and why was the installation deadline extended? Did the "all-powerful" railroad lobby just make it so? Did the pressure to "do something" to enhance rail safety in the shadow of a focusing event (a major rail disaster) simply overwhelm logic and reasonable concerns about technical feasibility? Yes.

The below discussion outlines the way in which Congressional action in mandating the installation of PTC comports with Kingdon's theory. It concludes that two significant railroad accidents served as focusing events to direct sufficient Congressional attention to railroad safety issues. Furthermore, the chapter explores how the haphazard congressional reaction fits neatly into Kingdon's model.

Who Cares About the Kingdon Model?

For one thing, the model implies that Congress often makes rash decisions, relegating concerns of good governance to secondary status. As long as we are asking when Congress acted and why, we should also ask if what they did was wise. For this, the paper will consider Douglas Arnold's model of congressional action, particularly his contention that even though citizens might have no policy preferences prior to an issue

receiving publicity, legislators anticipate and respond to citizens' potential policy preferences as if they already existed.³¹ In summary, the chapter will explore how Kingdon's theory helps us understand when Congress acts and why, and Arnold, Mayhew and King will help us understand which policies they choose. The unfortunate conclusion is that in the wake of focusing events, Congress is likely to act quickly to clear an agenda item, typically with little regard for the particulars of the policy.

The Enactment of the PTC Mandate Fits the Kingdon's Model

In the second half of 2008, a bill to reauthorize rail safety programs was moving in the Congress—H.R. 2095, the Rail Safety Improvement Act (RSIA).³² Within weeks of the Chatsworth accident, the bill was approved by the House and a bicameral conference committee was formed. A mandate to "prevent something like Chatsworth from ever happening again" (e.g. PTC) was added to the bill in conference with little public debate. Regardless of the fact that a distracted commuter train operator caused the accident, the freight railroad industry ended up with a \$10 billion unfunded regulatory mandate.³³ To understand the mindset that resulted in this knee-jerk response to a perceived crisis, consider Herbert Simon's comments on a human's limited capacity for attention: "the capacity of the human mind for formulating and solving complex problems is very small compared with the size of the problems whose solution is required for objectively rational behavior in the real world—or even for a reasonable

³¹ Arnold, R D. *The logic of congressional action*. New Haven: Yale University Press (1990): 10.

³² Library of Congress Database of Legislative Actions for Rail Safety Improvement Act of 2008.

³³ Frittelli, John. "Positive Train Control (PTC): Overview and Policy Issues." *Congressional Research Service*. (2012): 9.

approximation to such rationality.”³⁴ The staffers and members of Congress who conceived the PTC mandate were relatively inexperienced with railroad operations, yet still they felt compelled to identify and legislate *something* to solve the perceived problem.³⁵ Since the NTSB—a highly regarded entity—had already recommended PTC, legislating a mandate was a readily available, seemingly simple solution.³⁶ In short, PTC was on the agenda, there was a major rail accident that focused Washington’s attention, and the rail industry, despite having a well-organized and well-funded lobbying operation, suffered a massive defeat in Washington.

What is a focusing event?

Before describing focusing events, we need an understanding of Kingdon’s concept of the Congressional agenda. As Kingdon describes it, the Agenda is:

The list of subjects or problems to which governmental officials, and people outside of government closely associated with those officials, are paying some serious attention at any given time. Within the general domain of transportation, for instance, the Secretary of Transportation and the members of the congressional committees of jurisdiction could be considering, at any given time, a range of problems...Out of the set of all conceivable subjects or problems to which officials could be paying attention, they do in fact seriously attend to some rather than others.³⁷

An individual member of Congress’s agenda is the result of that member’s a) desire to satisfy constituents; b) desire to enhance their intra-Washington reputation, such as becoming known as a “heavyweight” who must be taken seriously with regard

³⁴ Simon, Herbert A. *Administrative Behavior: A Study of Decision-Making Processes in Administrative Organizations*. 4th ed. New York: The Free Press. (1997): 196.

³⁵ Drutman, Lee. *The Business of America is Lobbying: how corporations became politicized and politics became more corporate*. Oxford New York, NY: Oxford University Press (2015): 35.

³⁶ Drutman, Lee. *The Business of America is Lobbying: how corporations became politicized and politics became more corporate*. Oxford New York, NY: Oxford University Press (2015): 35.

³⁷ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 3.

to a particular subject matter; and c) desire to achieve the member's conception of good public policy.³⁸ Along the same lines, we must also consider the role of outside interest groups in contributing to this agenda. Although at times interest groups—including the AAR—promote the establishment of new governmental programs, interest groups “...are often concerned with protecting current benefits and prerogatives, [and] affect the governmental agenda more by blocking potential items than by promoting them.”³⁹

The desires of the railroad interests notwithstanding, Kingdon noted the way in which the Executive Branch of the federal government develops an agenda for resolving problems in the railroad industry, per Congressional direction. He writes that, “in addition to routine monitoring, studies are often conducted on a particular problem at a given point in time, either by a government agency or by non-governmental researchers or academics...a statute mandates a study by the Department of Transportation of the problems of the railroad industry, the causes of those problems, and the options that might be considered to remedy them.”⁴⁰ This was true in 2008, just as it was in the 1970s and 1980s when Kingdon made this observation.

Kingdon proposes that the political agenda is the confluence of three elements: the problems identified by the key actors, the solutions proposed, and the political will to do something about the problem. Focusing events are the genesis of political will. These are the push that gets the attention of people in and around government to take action to address an identified problem. Often, the push is, “...an event like a crisis or

³⁸ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 39.

³⁹ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 67.

⁴⁰ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 91.

disaster that comes along to call attention to a problem, a powerful symbol that catches on, or the personal experience of a policymaker.”⁴¹ In Kingdon’s interviews, he found that, “Fully 63 percent of the transportation interviews included the discussion of some sort of crises, compared to only 11 percent of the health interviews,” and none of the health interviews coded crises as important.⁴² As one of Kingdon’s interview subjects so eloquently put it, “This system responds to crisis. It’s the only thing that it does respond to. That’s what politics is all about. It’s the American system; you have to get hit on the side of the head before you do something.”⁴³

In September 2008, with rail safety already on the Congressional agenda in the wake of the Graniteville accident, apparently the Chatsworth accident hit the Congress on the side of the head. Perhaps unsurprisingly, the Congress reacted like a person with a head injury, as it stumbled in a daze towards what it hoped would be a solution.

The Chatsworth and Graniteville Accidents Were Focusing Events

Just as the quail, partridge or pheasant will command a pointing dog’s attention, there are many variations of a focusing event that will garner Congressional attention. Some focusing events are powerful enough in and of themselves to garner sufficient Congressional attention to compel action. One of Kingdon’s respondents thought of the collapse of the Penn Central railroad this way. As the respondent put it, “It was a threat to the economy of the nation as a whole. It was horrendous and unthinkable to allow

⁴¹ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 94-95.

⁴² Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 95.

⁴³ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 95.

service to stop.’ Such events demand some sort of actions so clearly that even inaction is a decision.”⁴⁴

Other focusing events are only powerful by virtue of their close association to a particular member of Congress. Kingdon cites a lobbyist for biomedical research who pointed out that he kept track of which diseases had afflicted the family members of certain members of Congress.⁴⁵ Yet another sort of focusing event is the one that acts as a powerful symbol “...there can be symbols for political events and policy proposals as well as for problems...such a symbol acts (much as personal experiences) as reinforcement for something already taking place and as something that rather powerfully focuses attention, rather than as a prime mover in agenda setting.”⁴⁶

Finally, Kingdon adds that focusing events must be accompanied by something already on the policy agenda. By the time the Chatsworth accident occurred in September 2008, the NTSB had had PTC on its “Most Wanted List” for 18 years.⁴⁷ In addition, the Graniteville Accident was still on policymaker’s minds and the Rail Safety Improvement Act was moving through the legislative process.⁴⁸

What would Kingdon’s model predict if the following criteria were met?

1. There was a deadly rail accident in a state (California) with one of the largest media markets in the nation (a focusing event). Press coverage was

⁴⁴ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 96.

⁴⁵ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 96.

⁴⁶ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 97.

⁴⁷ Frittelli, John. “Positive Train Control (PTC): Overview and Policy Issues.” *Congressional Research Service*. (2012): 3.

⁴⁸ Library of Congress Database of Legislative Actions for H.R. 2095, Rail Safety Improvement Act of 2008 (PL 110-432) 110th Congress, 2nd Sess.

immediate, with ghastly images of destruction on the nightly news, on the covers of newspapers, and live on the cable networks.

2. California was represented by a pair of powerful, senior Senators: Senators Feinstein and Boxer—who sat on the Public Works Committee. In California, the Democratic Party’s primary election typically determines the winner of the general election. Kingdon would call these Senators “policy entrepreneurs,” willing to invest their resources of time, energy and reputation in exchange for a policy and/or political return.⁴⁹
3. Photographs of that rail accident were quickly reproduced in Washington for use on the Senate floor, thus drawing public attention to the focusing event.

Answer: Kingdon would anticipate that a rail safety agenda item such as PTC would finally see the light of day in the U.S. Congress. And that is exactly what happened.

A Focusing Event Spurs Congressional Action: The September 2008 Metrolink Railroad Accident, and the Enactment of the Unattainable PTC Mandate

To review, on September 12, 2008, 25 people were killed in a passenger railroad accident in Southern California. On January 6, 2005, nine people were killed in a railroad accident involving a freight train carrying toxic-by-inhalation chemicals. The NTSB reported that both accidents could have been prevented by Positive Train Control. The chapter will now move on to the specifics of the Congressional response and a specific definition of Positive Train Control.

⁴⁹ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 122.

Positive Train Control

Although billed by its congressional proponents as a simple technological fix,⁵⁰ PTC is actually a system of 30 independent technologies. And since PTC is an overlay technology, designed to operate seamlessly atop the railroads' existing dispatching and signaling systems, it is also a classic example of a kludge—"an inelegant patch put in place to solve an unexpected problem and designed to be backward-compatible with the rest of an existing system."⁵¹ Stephen Teles has aptly referred to kludges in the public policy context as clumsy solutions. Generally, America's "Kludgeocracy...makes so much of American public policy vexing and wasteful for ordinary citizens and governments...[and] makes it so easy for organized interests to profit from the state's largesse."⁵² However, in the PTC context, the opposite is true. PTC was described as a simple, elegant solution to the complex problem of enhancing railroad safety in a way that made it easy for the public to understand and support. Meanwhile, the organized interest (i.e. the railroads, represented in Washington by the AAR) are responsible for the estimated \$10 billion cost. In the shadow of a focusing event⁵³ like the Chatsworth accident, the AAR was unable to prevent the enactment of a broad PTC mandate.

Subsequent the enactment of the Rail Safety Improvement Act (RSIA), PTC is defined in federal law as a "system designed to prevent train-to-train collisions, overspeed derailments, incursions into established work zone limits, and the movement

⁵⁰ Feinstein, Dianne. "Senator Feinstein Urges the Federal Railroad Administration to Expedite Implementation of Collision Avoidance Systems; Requests Waiver for Metrolink". Press Release. *Office of Senator Dianne Feinstein*. Nov. 24, 2008.

⁵¹ Teles, Steven. "Kludgeocracy in America". *National Affairs*. December 2013: 98.

⁵² Teles, Steven. "Kludgeocracy in America". *National Affairs*. December 2013: 100.

⁵³ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 20.

of a train through a switch left in the wrong position.”⁵⁴ The Federal Railroad Administration (FRA) did not mandate specific technical requirements; instead, it provided railroads with the flexibility to adopt the PTC systems best suited to their particular needs. However, all PTC systems share certain characteristics, including use of radio communication to provide in-cab signals to the train engineer and dispatcher ability to stop a train in an emergency.⁵⁵ In other words, the requirements are designed to address the precise characteristics of two rare events: the Chatsworth and Graniteville accidents.

The technical history and specifications of PTC are far beyond the scope of this study. Suffice to say the form of radio-controlled PTC mandated by the RSIA was a new, unproven technology for the North American rail network.⁵⁶ The freight railroads advised the Congress at the time of enactment that deployment and activation of the system by the end of 2015 was likely infeasible. Nevertheless, in the shadow of the Chatsworth accident, the Congress enacted the mandate.⁵⁷

Kingdon’s theory identifies the potential pitfalls of Congress enacting unripe policy, while conceding that just because an idea is not technically feasible does not mean its time has not come. As he bluntly puts it, “Even faulty ideas can be trail

⁵⁴ 49 C.F.R. § 236. Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, Service, and Repair of Signal and Train Systems, Devices, and Appliances.

⁵⁵ “The North American Joint Positive Train Control (NAJPTC) Project, Research Results.” *Federal Railroad Administration*. (2009): 2.

⁵⁶ Government Accountability Office Report. *Rail Safety: Federal Railroad Administration Should Report on Risks to the Successful Implementation of Mandated Safety Technology*. December 2010.

⁵⁷ The Senate passed the bill on 10/2/2008; the House passed it on 10/6/2008; President Bush signed it on 10/16/2008. Source: Library of Congress Database of Legislative Actions for Rail Safety Improvement Act of 2008.

balloons,”⁵⁸ though, generally, ideas are ironed out before a proposal is enacted. Even so, “attention to the details of implementation does not necessarily result in enacted programs that work....to be considered, however, policy makers believe that a proposal will work if enacted, even if the idea seems far-fetched in hindsight.”⁵⁹ Unfortunately, sometimes familiarity with a concept or idea can result in an “emerging consensus” that can ultimately overcome technical feasibility concerns. In the case of PTC, the NTSB consistently added an air of authority and legitimacy to the idea that PTC’s time had come. Any time the NTSB referenced the need to install PTC, they pointed to a 1969 Penn Central commuter railroad accident and stated that the Board has called for PTC for “more than 40 years.”⁶⁰ Never mind that Hanna-Barbera first popularized flying cars for more 50 years ago and Toyota still has not come out with a flying 4Runner; on Capitol Hill the NTSB is regarded as an expert authority on transportation safety technology.⁶¹ Additionally, multiple pieces of legislation calling for PTC feasibility studies and deployment had been introduced over the previous decade.⁶² Thus, the technology was presumed by key Congressional decision-makers to be ready for prime time. Figure 1 below illustrates the timeline of events that led to the enactment of the PTC mandate.

⁵⁸ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 131.

⁵⁹ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 132.

⁶⁰ National Transportation Safety Board 2014 Most Wanted List Press Release on PTC.

⁶¹ Novak, Matt. “Automating Hard or Hardly Automating? George Jetson and the Manual Labor of Tomorrow. *Smithsonian Magazine*.” February 2013; Every current and former staffer interviewed for this paper confirmed NTSB is a highly trusted source of information.

⁶² Black, David. Testing the Streams Theory of the Public Policy Process Using Three Case Studies in the Field of U.S. Freight Rail Policy. The Johns Hopkins University. (2011): 20-22.

Figure 1: Timeline of Events Following the Chatsworth Accident⁶³

September 15	Senator Boxer states on her website that she has requested a hearing on the collision in Chatsworth. She also asks that the Senate review the recently approved RSIA and move up the timetable for requiring installation of PTC “in light of this tragic accident.” ⁶⁴
September 16	An <i>LA Times</i> editorial calls for implementation of PTC, a technology “that probably could have prevented the disaster,” and the allocation of federal funds to help with the cost of installation to passenger rail entities. ⁶⁵
September 16	Senator Dianne Feinstein (D-CA) and Senator Boxer (D-CA) introduce S. 3493 “that would force railroad companies to install [PTC] systems by 2012 in high-risk areas where freight and passenger service mix and in all other areas by 2014.” ⁶⁶
September 18	Congressman Adam Schiff (D-CA) introduces H.R. 6973, a companion bill to S. 3493. ⁶⁷
September 24	House of Representatives, by voice vote, passes the Rail Safety Improvement Act of 2008 Conference Report, amended to require “PTC installation by 2015 on all rail lines that carry passengers and on freight lines that carry hazardous materials.” ⁶⁸
October 1	Senate passes the conference report and sends the legislation to the White House.
October 16	President Bush signs the Rail Safety Improvement Act of 2008.

While policymakers in Congress watched the ink dry on their newly crafted mandate, looking forward to a new day in rail safety, the railroad industry felt the weight of the multi-billion-dollar mandate and got to work. It was a daunting task, in

⁶³ Black, David. “Testing the Streams Theory of the Public Policy Process Using Three Case Studies in the Field of U.S. Freight Rail Policy.” The Johns Hopkins University Master’s Thesis. (2011): 24-25.

⁶⁴ Boxer, Barbara. Boxer continues fight for Metrolink rail safety measures. Press Release. *Office of United States Senator Barbara Boxer*. September 18, 2009.

⁶⁵ Editorial Staff. “Make the rails safer”. *Los Angeles Times*. September 16, 2008.

⁶⁶ Feinstein, Dianne. “Senators Feinstein and Boxer introduce legislation to require collision avoidance systems on all major U.S. rail lines”. Press Release. *Office of United States Senator Dianne Feinstein*. September 18, 2008.

⁶⁷ Schiff, Adam. “Schiff, Waxman, Gallegly Introduce Legislation to Require Collision Avoidance Systems on All Major U.S. Rail Lines.” Press Release. *Office of United States Representative Adam Schiff*. September 19, 2008.

⁶⁸ Werner, Erica. “House passes rail safety bill”. *USA Today*. September 24, 2008.

the next seven years, to develop and install this new, complex train control system while simultaneously ensuring fail-safe interoperability among dozens of carriers and training tens of thousands of employees. In December 2010, the U.S. Government Accountability Office (GAO) published a report expressing concerns about the ability for the railroad industry to meet the 2015 deadline (along with concerns about PTC diverting funding from other critical safety needs). GAO's report acknowledged the railroads were attempting to develop and install unproven technologies.⁶⁹ In January 2012, the AAR, on behalf of the railroads, updated the Federal Railroad Administration (FRA) on the industry's progress. The AAR reported:

Since enactment of the RSIA and promulgation of the PTC regulations, the railroad industry has devoted enormous resources in an unprecedented effort to develop PTC systems and address myriad interoperability issues. However, much of the work to implement PTC remains to be done...less than 10 percent of Wayside Interface Units (typo?) have been installed, work on switches in non-signaled territory has been completed for less than 10 percent of the switches that need upgrading, only about 10 percent of signal projects have been completed, 220 MHz radios are not yet in production, and, leaving aside the unavailability of the radios, PTC equipment has been partially installed on only 15 percent of the locomotives that will need PTC equipment...in no case is the industry close to completing the work that must be done...essential software and hardware for many components are still under development and testing of these components must be performed after the software and hardware are available...the interoperability concern has been magnified by current plans for phasing in PTC, which instead of providing for the implementation of PTC in less complex areas first to reduce operation risk ,actually provide for PTC to be installed first in the areas most complex from the perspective of interoperability.⁷⁰

The White Paper concludes that, "Despite the railroads having spent approximately \$1.5 billion to develop and install PTC, the December 31, 2015 deadline

⁶⁹ Government Accountability Office Report. *Rail Safety: Federal Railroad Administration Should Report on Risks to the Successful Implementation of Mandated Safety Technology*. December 2010.

⁷⁰ Association of American Railroads. "PTC Implementation: The Railroad Industry Cannot Install PTC on the Entire Nationwide Network by the 2015 Deadline." January 2012.

for implementation of a nationwide interoperable PTC network is unachievable.”⁷¹ In addition to the FRA, the paper was transmitted to the entire U.S. Congress, including the relevant House and Senate committees. The AAR subsequently transmitted annual updates each year for 2013, 2014 and 2015.

By Setting an Unachievable Mandate, Congress Set Itself Up for Another Focusing Event. Did Kingdon’s Model Hold True in Round Two?

A Nonsensical Mandate

In *Thank You for Smoking*, arguably the finest film about lobbying ever made, the son of protagonist Nick Naylor, Vice President of a Big Tobacco lobbying group, asks, “Dad, why is the American form of government the best form of government?” Naylor instantly replies in his typical deadpan, “Because of our endless appeals system.”⁷² Naylor is not only referring to the judicial appeals process, but also the ability for entities to seek relief in the regulatory and legislative realms. Naylor does not have to think twice about his answer to his son’s question because he knows the beauty of the American system, from a lobbyist’s perspective, is that a loss in one branch of government can often be rectified or mitigated in another. The day after passage of RSIA, the railroads shifted their attention to the rulemaking process at the Federal Railroad Administration (FRA), which was charged with developing PTC regulations.

Section 20157 of the PTC statute states that railroads:

⁷¹ Association of American Railroads. “PTC Implementation: The Railroad Industry Cannot Install PTC on the Entire Nationwide Network by the 2015 Deadline.” January 2012.

⁷² *Thank You for Smoking*. Film. Fox Searchlight. 2006.

...shall develop and submit to the Secretary of Transportation a plan for implementing a positive train control system by December 31, 2015, governing operations on—(A) its main line over which intercity rail passenger transportation or commuter rail passenger transportation [...] is regularly provided; (B) its main line over which poison- or toxic-by-inhalation hazardous materials [...] is regularly provided; and (C) **such other tracks as the Secretary may prescribe** by regulation or order.” It further states that railroads must, “to the extent practical, implement the [PTC] system in a manner that addresses **areas of greater risk before areas of lesser risk.**”⁷³ (emphasis added).

Which additional tracks would the Secretary require be PTC-equipped? Would he include train movements in rail yard, for example? What is a greater risk area? Since the purpose of the technology is to prevent human-error caused train-train collisions, one would imagine “greater risk areas” to be locations where many railroads interchange and share tracks. But does it really make sense to require a complicated, unproven train control system that relies on interference-prone radio spectrum to be first deployed in say, downtown Chicago, rather than a cornfield in Iowa? Surely that would not be in the interest of safety. These questions and others were the subject of a protracted rulemaking process. The complexity of the rulemaking proceedings and uncertainty about which tracks would be included in the PTC mandate could have been avoided if those drafting the legislation had more expertise in railroad operations and had consulted with industry experts. But due to the nature of the politically-driven legislative process (i.e. the imperative to act before the heat of a crisis cools) and Congress’s utter lack of expert staff,⁷⁴ the details of the PTC requirements were left to the

⁷³ Public Law 110-432, the Rail Safety Improvement Act of 2008.

⁷⁴ Drutman, Lee. *The Business of America is Lobbying*: how corporations became politicized and politics became more corporate. Oxford New York, NY: Oxford University Press (2015): 33-34.

FRA, with little regard for the duration of the rulemaking process, while the implementation deadline remained in place.

Over the next five years, the AAR coordinated an effort among its members to influence the outcome of the various rulemakings surrounding PTC. For all of its bureaucratic inefficiencies and despite the occasional instance of the agency's politically appointed Administrator (at the time a former rail union lobbyist) violating its data-driven mission, the FRA is generally a well-managed institution, operating independent of undue outside influence. This is typical of industry-specific regulatory agencies like the FRA's predecessor agency, the Interstate Commerce Commission.⁷⁵ The particulars of this effort go beyond the scope of this paper, suffice to say there were more than one-hundred meetings between AAR government affairs, legal and technical staff, and FRA staff, during which the AAR presented evidence in support of limiting the mandate.

Finally, on August 22, 2014, the FRA released its final rule for PTC systems—just 16 months ahead of the implementation deadline.⁷⁶ The final rule requires railroads to install a PTC system only for track segments carrying freight that present a *de minimis* safety risk, and exempts from the mandate PTC-unequipped freight trains associated with certain freight yard operations. It also revises the existing regulations related to en-route failures of a PTC system, adds new provisions related to other failures of a PTC

⁷⁵ Posner, Richard. *The Concept of Regulatory Capture: A Short, Inglorious History*. Cambridge University Press. (2013): 54.

⁷⁶ The industry moved forward with installing PTC on lines that were clearly subject to the congressional mandate: the 60,000 miles of tracks that carry passengers or toxic-by-inhalation hazardous materials. The industry also made enormous progress in equipping locomotives, developing software and equipment, purchasing spectrum and training employees; Federal Register. Positive Train Control Systems (RRR). A Rule by the Federal Railroad Administration. August 22, 2014.

system, and amends the regulations on applications for approval of certain modifications of signal and train control systems.

For the purposes of this paper, the salient point is that it took the AAR six years and millions of dollars of lobbying efforts to convince the FRA to limit the scope of the PTC mandate to a reasonable level (e.g. affecting only locations where high-speed, catastrophic accidents are likely—not rail yards—and allowing railroads to first implement and test PTC in the least complicated operating environments). Had the Congress simply given its very technologically prescriptive law due consideration and made the boundaries of the mandate clear in the legislative text, millions of dollars and years of effort in getting to this point would not have been necessary. Moreover, if the law had been well crafted from the start, some aspects of PTC deployment may have occurred faster.⁷⁷

In the Face of the 2015 Deadline, Officials and Railroaders Alike Faced Regulatory Reality, Not Capture

Before concluding this represents any sort of triumph of industry lobbying, it is important to take a sober view of exactly what happened in the FRA rulemaking. For all of its success in convincing the FRA to limit the scope of the PTC mandate in certain areas, the AAR has not “captured” its regulatory agency.⁷⁸ The statute provided the

⁷⁷ In an ironic turn of events, if a simpler system known as Automatic Train Control had been mandated, a May 2015 Amtrak accident might have been prevented. Source: Epstein, Jim. “Is Dianne Feinstein Responsible for the Amtrak Crash that Killed Eight? No, But Government Safety Mandates Can Have Tragic and Unintended Consequences”. *Reason Magazine*. May 19, 2015.; Additionally, The law did not specify any procurement requirements for PTC equipment. The freight rail industry’s collective decision to obtain all of their radio equipment from Wabtec resulted in significant delays. Source: Stagl, Jeff. “Positive train control: Suppliers continue to enhance their systems and components”. *Progressive Railroading*. April 2015.

⁷⁸ Posner, Richard. *The Concept of Regulatory Capture: A Short, Inglorious History*. In “Preventing Regulatory Capture. Eds. Daniel Carpenter and David Moss. (2013): 50.

Department of Transportation some leeway in identifying other areas that should be subject to the mandate, but since Congressional intent was to prevent catastrophic train-train collisions, extending the mandate to rail yards that contain older locomotives that are never used in revenue service simply did not make sense.

At the same time, it may be true that there is some degree of “cultural capture” of the FRA by the AAR. The AAR representatives that presented evidence to the FRA are well compensated, have extensive technical expertise in railroad operations and regulatory law, and many have previously worked at the FRA. Certainly the parties on both sides of the rulemaking “...operate through a set of shared but not explicitly stated understandings about the world”⁷⁹ of railroad policy. So to the extent that those sitting on the FRA’s side of the negotiating table identified with, respected the status of, and valued their relationships with the railroad representatives, a degree of cultural capture may have contributed to the final outcome.⁸⁰ That said, the rail industry’s managers would not consider the rulemaking process a particular success, since it resulted in a protracted period of uncertainty about the final scope of the mandate, all while the deadline remained in place.

While the August 2014 final rule provided clarity in terms of the exact scope of the PTC mandate, the December 2015 installation deadline remained unrealistic. Since the deadline was statutory, only the Congress could amend it.

⁷⁹ Posner, Richard. *The Concept of Regulatory Capture: A Short, Inglorious History*. In “Preventing Regulatory Capture. Eds. Daniel Carpenter and David Moss. (2013): 50.

⁸⁰ Kwak, James, *Cultural Capture and the Financial Crisis*. In “Preventing Regulatory Capture,” eds. Daniel Carpenter and David Moss. (2013).

Dealing with the Deadline

Returning to the question of the PTC implementation deadline, by 2012 the AAR began to publicly call for the enactment of legislation to extend the deadline to a date that would allow for appropriate installation and testing of the systems. By being a part of the conversation in Washington, rail lobbyists were able to advise members of the House Transportation and Infrastructure Committee of the unrealistic nature of the PTC deadline. The AAR's one-page background paper on PTC that year outlined the industry's efforts to comply with the deadline and the many unforeseen impediments to installation. For example, it pointed out that although the railroads had retained thousands of additional personnel and begun installing thousands of radio units on locomotives, the company developing the software for the braking algorithm that makes PTC possible had not even released its beta version of the program yet.

The Committee Chairman, Rep. John Mica (R-FL), was sympathetic to this argument and included language to extend the deadline by five years in his bill to reauthorize federal transportation programs. It is possible the PTC deadline extension was included so that the rail industry would support the bill, even though it also increased the weight limit for trucks on federal highways—a threat to certain categories of rail business. However, on the Senate side, Chairman Jay Rockefeller (D-WV) had long held a grudge against the rail industry.⁸¹ He was unwilling to support a PTC

⁸¹ Grudge is an unfortunate but accurate characterization, and it goes back three generations. See: <http://www.history.co.uk/biographies/john-d-rockefeller>

deadline extension unless the bill also included language to artificially cap railroad rates for service and mandate certain interchange practices that would benefit a segment of rail shippers. Faced with this dilemma and another three years before the actual deadline, the rail lobbyists worked with more friendly Senators to convince Chairman Rockefeller to drop the rail title of the bill altogether. Thus, lobbying for a PTC deadline extension continued.

It is important to keep in mind that the consequences for operating a railroad after the deadline without PTC installed would be extremely serious. The law allowed the Secretary of Transportation to impose civil penalties of up to \$25,000 per violation, per day. Moreover, where a grossly negligent violation or a pattern of violations has created an imminent hazard or has caused actual death or injury, a penalty of up to \$100,000 per violation per day could have been assessed. But the real danger lies in the potential for ruinous liability in litigation. The trial bar would likely jump at the chance to sue the rail sector for accidents stemming from its inability to implement PTC by the 2015 deadline. This threat is constantly on the minds of the railroad managers that make up the AAR's Board of Directors. The task of translating the pace of Washington to non-lobbyist managers is always difficult⁸²—and is only compounded when the entire company could be at risk if acceptable legislation is not enacted. Certainly the rail industry's more than one-hundred years of experience in dealing with Washington came into play at this juncture. The AAR's Board did not penalize the association that year for failing its PTC deadline extension objective. The lack of negative consequences is likely a

⁸² Drutman, Lee. *The Business of America is Lobbying: how corporations became politicized and politics became more corporate*. Oxford New York, NY: Oxford University Press (2015):145.

function of the rail management's extensive understanding of Washington, as well as the skill set of President and CEO Ed Hamberger, AAR's lead lobbyist.⁸³

In May 2013, the industry received what only a rail lobbyist could call a "gift." The Federal Communications Commission (FCC) advised the railroads that construction of the more than 22,000 antennas necessary to relay PTC radio signals could not proceed until further notice. The Commission determined that each of these antennas is subject to its environmental and historical review processes and regulations, including the use of the FCC's Tower Construction Notification System, which can only process approximately 2,000 antennas construction requests per year.⁸⁴ Given that the industry was still under a mandate to have all of these antennas installed and operational in less than two years, the railroads found themselves facing conflicting regulations: one federal agency (the FRA) was instructing them to have PTC installed within two years, while another agency (the FCC) issued the equivalent of a cease and desist notice, instructing them to not install equipment that makes PTC possible.

The rail lobbyists worked quickly to advise the Congress—including their allies, but especially those who doubted the industry's commitment to safety and PTC in the first place—of the conundrum. They informed them of the basic facts of the FCC problem and requested assistance in getting the FCC to move faster in approving antennas. On August 8, 2013, the Chairman of the House Energy and Commerce

⁸³ Hamberger is extremely well respected in Washington and at each of the railroads' headquarters. A cursory reading of a *Railway Age* search of his name provides an understanding of his skill at translating the industry's priorities into action in Washington.

⁸⁴ Federal Communications Commission Public Notice. Tribal Nations Consultation on Positive Train Control. September 2013.

Committee and Ranking Member of its Subcommittee on Communications, which have jurisdiction over the FCC, along with the Chairman of the House Transportation and Infrastructure Committee and its Railroads Subcommittee, which have jurisdiction over the FRA, wrote to the Commissioner of the FCC. The letter outlines the railroads' concerns with the FCC's process and further states, "It is our understanding that this is one of a number of challenges facing the railroads as they attempt to deploy PTC. We urge the FCC to move expeditiously to put a process in place to facilitate the timely deployment of PTC...we would appreciate periodic updates from you or your staff on efforts to resolve this matter."⁸⁵

In many ways, the FCC impediment provided rail lobbyists with a new opportunity to enlarge the scope of the conflict in a way that made it impossible for the leading proponents of PTC—namely, Senator Dianne Feinstein (D-CA), the original sponsor of the PTC provision—to maintain control of the conversation. In retrospect, it actually proved disastrous for their quixotic cause. In addition to the above mentioned letter, the industry worked with its allies on Committees outside the confines of traditional rail lobbying, such as the Appropriations Subcommittee on Financial Services and General Government, which determines funding levels for the FCC. The industry worked with Senators on that Committee who were sympathetic to the impossible position in which the railroads found themselves. Senators asked FCC Commissioners tough questions during budget and confirmation hearings. This upset the balance of power and resulted in the FCC eventually admitting there was a problem, and,

⁸⁵ Walden, Greg and Denham, Jeff, et al. Letter to FCC Commissioner Tom Wheeler regarding approval of towers for PTC deployment. August 8, 2013.

importantly, more Senators understanding the dilemma the rail industry faced.⁸⁶

Although the AAR generally has little interface with these non-transportation Committee members, as mentioned above, the railroads remain engaged with members representing states where their companies operate. Additionally, Committee memberships change over time and the railroads remain engaged year after year.

The FCC conundrum is also a lesson in the power of expectations; a classic example of the utility of the Second Face of power.⁸⁷ As Schattschneider observed more than 50 years ago, if politics is the art of the possible, then power is the art of defining the possible. The rail lobby successfully leveraged the FCC's delays in order to redefine "the possible."⁸⁸ The argument against extending the PTC deadline—that the railroads will not meet the deadline due to negligence on their part—no longer held water on Capitol Hill. It also provided an opportunity for rail lobbyists to buck the conventional wisdom that it is useless to lobby members of Congress who are unlikely to ever support the lobbyist's cause.⁸⁹ It is safe to assume there was a lovely hint of spiteful Schadenfreude in the air when the railroads met with Senator Feinstein to alert her to the FCC issue. She ended up making a phone call to the FCC.

The PTC struggle also highlights one of the most insidious problems on Capitol Hill: the distortion of what is important for elected leaders to spend time on. The average American does not care what year PTC is deployed, they just want railroads to

⁸⁶ Schattschneider, E. E. *The semisovereign people: a realist's view of democracy in America*. Hinsdale, Ill: Dryden Press. (1975): 3-4.

⁸⁷ Lukes, Stephen. *Power: a Radical View*. New York: Palgrave Macmillan. (2005): 3.

⁸⁸ Schattschneider, E. E. *The semisovereign people: a realist's view of democracy in America*. Hinsdale, Ill: Dryden Press. (1975): 15.

⁸⁹ Hall, Richard and Deardorff, Alan. *Lobbying as a Legislative Subsidy*. *American Political Science Review*. (2006): 76.

be as safe as possible.⁹⁰ However, members of Congress are extremely risk-adverse and have thus far hesitated to repeal this safety mandate, as Arnold observes, "...the same citizens who have no opinions about a policy at the time it [was] considered can still have a large impact on legislators' decisions as long as legislators anticipate and respond to these citizens' potential preferences as if they already existed."⁹¹ Mayhew's theory is based on the assumption that reelection is the dominant goal of members of Congress; goals related to policy or leadership are secondary.⁹² Even though Mayhew makes this assumption in order to establish an analytical framework, in this case, it appears the assumption is correct. If the Congress had simply set a realistic deadline for PTC, or better yet, mandated a performance-based safety outcome rather than a prescriptive technology, thousands of hours of Congressional time could have been saved.

Overreactions to Focusing Events Offer Politicians Multiple Opportunities for Political Victories

"Politicians often get rewarded for taking positions rather than achieving effects."⁹³ –David Mayhew

Whether or not mandating PTC is good public policy is debatable. The railroads argued for years that if they were to spend \$10 billion on safety technologies, PTC—which can only prevent approximately 2% of train accidents⁹⁴—would not be high on the list. In fact in 2011 during a Senate Homeland Security Committee hearing, Cass

⁹⁰ Arnold, R D. *The logic of congressional action*. New Haven: Yale University Press (1990): 17.

⁹¹ Arnold, R D. *The logic of congressional action*. New Haven: Yale University Press. (1990): 11.

⁹² Arnold, R D. *The logic of congressional action*. New Haven: Yale University Press. (1990): 5.

⁹³ Mayhew, David R.. 2001. "Observations on "congress: The Electoral Connection" a Quarter Century After Writing It". *PS: Political Science and Politics* 34 (2). 251.

⁹⁴ Frittelli, John. "Positive Train Control (PTC): Overview and Policy Issues." *Congressional Research Service*. (2012): 9.

Sunstein, then-adviser to President Obama at the White House Office of Information and Regulatory Affairs, singled out PTC as a rule with costs that are “unambiguously” greater than its benefits.⁹⁵ Although only one railroad has publicly stated that it has had to defer maintenance to areas of railroad operations that experience the most accidents (tracks and wheels) in order to comply with the PTC mandate, perhaps all would admit this privately.⁹⁶

What is not debatable is that Congress as an institution is withering on the vine (more on this in chapter three), and the poorly conceived PTC legislation and lack of action in the face of a looming reality is hurting an industry that makes vital contributions to American life. The Class I railroads are Fortune 100 corporations. Unlike every other mode of transportation, they neither take nor request a federal subsidy for the services they provide. As such, they must raise capital from the private market and allocate their resources carefully. The uncertainty surrounding the PTC mandate resulted in a tremendously ineffective use of corporate resources; lawyers and lobbyists do not move freight. They ride desks, not trains. And as the deadline drew near in the latter half of 2015, there were more Wall Street analyst inquiries about efforts to extend the PTC deadline on quarterly earnings calls.

⁹⁵ Mann, Ted. *Rail Safety and the Value of a Life*. The Wall Street Journal. June 17, 2013.

⁹⁶ Stannard, Ed. *NTSB Report: Excessive speed, railroad trainee error caused fatal Metro-North accidents*. New Haven Register. October 28, 2014.

Incredibly, Fixing Bad Policy Offers Another Political Victory

“Passing policy is irrelevant; no one ever got defeated for failing to pass a bill, but they do sometimes lose because they are on the wrong side of an issue.”⁹⁷—
John Bond

Although the author of this thesis portfolio was not in the room when the PTC language was crafted, apparently the FRA advised Senator Feinstein that the industry might be able to develop the new technology and install it within ten years (2018). Senator Feinstein, sensing a political opportunity to announce that she was “holding the railroads’ feet to the fire” on safety, insisted on an unrealistic five-year deadline (2012). Thus, Congress settled on a 2015 deadline. This is no way to make smart public policy, but it sure does comport with Kingdon’s theory of the importance of acting before the halo of the Focusing Event fades. It also fits Arnold’s theory that politicians anticipate the likely preferences of the public—in this case, that safer railroads are better sooner than later. While rationality certainly has its limits,⁹⁸ there must be a better way to make laws in one of the world’s oldest democracies. In the summer of 2015, with the deadline only months away, Senator Feinstein stood firm in opposition to any extension of the PTC deadline beyond six months, even though the railroads estimate 2018 is the soonest they could have all of the infrastructure installed. Was she hedging against the possibility of another PTC-preventable catastrophic railroad accident, or merely playing

⁹⁷ Bond, John R. “A Silver Anniversary Retrospective on David Mayhew’s “congress: The Electoral Connection””. *PS: Political Science and Politics* 34 (2). (2001): 253–4.

⁹⁸ Jones, Bryan D. *Politics and the Architecture of Choice: Bounded Rationality and Governance*. Chicago: University of Chicago Press. (2001): 5.

to an attentive public in California?⁹⁹ It is likely both. After all, there is a reason she has been in public office for more than 40 years.

As Arnold observes, the public opinion surrounding a vote at a particular time does not matter much; but it will matter if an incumbent's opponent raises the vote just before an election. As Fenno puts it, members of Congress in their "mind's eye" see their geographical constituency in terms of some special configuration of the variables of who and what exactly makes up the constituency.¹⁰⁰ That is, the constituency that the member actually worries about is not every single person that lives in the Congressional district. Instead, members consider the constituency that will likely pay attention to a particular issue or activity. Perhaps part of this constant concern for a particular constituency or voting bloc is that American politicians generally think they are more vulnerable than they actually are.¹⁰¹ And for the vulnerable American politician, special attention is paid to those who might be pleased to see their representative taking strong action on issues of public policy—particularly in the afterglow of a focusing event.

Deadline Extended in the Face of a Second Crisis

By mid-2015, with the PTC implementation deadline only a few months away, Harold Meyerson's conclusion held true: that just as the American people have a bias for action (i.e. mandating rail safety technology after deadly accidents), their government

⁹⁹ Arnold, R D. *The logic of congressional action*. New Haven: Yale University Press, 1990. Page 65-68

¹⁰⁰ Fenno, Richard F. "U.S. House Members in Their Constituencies: An Exploration". *The American Political Science Review* 71 (3). (1977): 855.

¹⁰¹ King, Anthony. "The Vulnerable American Politician". *British Journal of Political Science* 27 (1). Cambridge University Press. (1997): 1.

has a bias for stasis.¹⁰² However, the AAR was very optimistic that the Congress would extend the deadline.¹⁰³

After all, despite all of its flaws and lack of staff capacity, the Congress has, in recent years, proved it can act in the face of a looming deadline.¹⁰⁴ The real question facing the Congress in the summer of 2015 was the exact duration of the extension and if there would be any other requirements added on. Some Senators suggested requiring PTC for any rail lines that carry oil. For the railroad lobby however, the most important thing was to be ready to paddle when the proverbial legislative wave arrived in the fall of 2015.¹⁰⁵ To that end, the AAR participated in discussions with key Committee members examining variations of legislative language to extend the deadline. Whether the extension hitched a ride on an appropriations bill or a more relevant vehicle, like an extension or reauthorization of surface transportation law, mattered little.

On March 4, 2015, Senators Blunt (R-MO), Thune (R-SD), Nelson (D-FL), and McCaskill (D-MO) introduced S. 650, legislation delaying the PTC implementation deadline to 2020 with FRA discretion to provide an additional two-year extension. The Senate Commerce Committee approved the legislation by voice vote on March 25, 2015. By August 2015, the bill had 12 bipartisan cosponsors and Committee Leadership was examining possible next steps in moving the bill forward. On a separate track, the AAR's Board of Directors met with Senate Majority Leader Mitch McConnell (R-KY) in

¹⁰² Meyerson, Harold, *Did the Founding Fathers Screw Up?* American Prospect. September 26, 2011.

¹⁰³ AAR Background Paper on Positive Train Control. July 2014.

¹⁰⁴ Kelly, Lorelei, *Congress' Wicked Problem: Seeking Knowledge Inside the Information Tsumani*. New America Foundation. December 2012.; Davis, Susan. "A guide to Congress' 2015 deadlines". *USA Today*. February 18, 2015.

¹⁰⁵ Kingdon, John W. *Agendas, alternatives, and public policies*. New York: Longman. (1995): 165-7.

the spring of 2015 and was assured that the Senate would take up PTC extension legislation in one form or another in advance of the December 31st deadline.

Why did the Committee at last move extension legislation? It may have been the result of the AAR's "intellectual arsenal." While each PTC conversation, report, white paper, panel discussion and op-ed alone may not have convinced anyone of the need to extend the deadline, these elements, "...merely [added] to an echo chamber...Hearing something enough times, it starts to achieve familiarity. After a while familiarity has a ring of truth."¹⁰⁶ Or as Kingdon would argue, familiarity puts the issue on the agenda.

A False Start

Timing is everything in Washington. Just two months after the Senate Committee approved the PTC extension legislation, the House appeared poised to act on an extension through the appropriations process. In early May of 2015, AAR worked with leaders on the House Appropriations Transportation Subcommittee to include a PTC deadline extension in the House Transportation-HUD appropriations bill. Tragically, however, on May 12, an Amtrak train derailed in Philadelphia, killing 8 people, and injuring 200. It was Amtrak's first deadly accident on the Northeast Corridor since

¹⁰⁶ Elements of the intellectual arsenal: AAR's lobbying disclosure (LD-2) forms, which are available through the Senate Office of Public Records. Each disclosure since Q3 2008 lists PTC as an issue lobbied before the House and Senate; AAR PTC landing page. The AAR's May 2015 PTC implementation status report will be posted here shortly. The report outlines progress to date and challenges that remain, making installation by the end of 2015 impossible; Positive Train Control White paper. Joint Council on Transit—Wireless Communications; NTSB Two-day panel discussion forum of positive train control systems. February 27, 2013; Will, George. "Positive Train Control: A mandate that is off the rails." *The Washington Post*. May 31, 2013; Intellectual arsenal described in: Drutman, Lee. *The Business of America is Lobbying*: how corporations became politicized and politics became more corporate. Oxford New York, NY: Oxford University Press (2015): 39-40.

1987.¹⁰⁷ The NTSB quickly determined that the accident would have been prevented by PTC. Rather than a PTC deadline extension moving, another round of grandstanding ensued. Critics of the railroads' progress on PTC, such as Senate Commerce Committee Member Richard Blumenthal (D-CT), issued press statements criticizing efforts to extend the deadline in the wake of the Amtrak accident.¹⁰⁸ And just two days after the Amtrak accident, Senator Feinstein (D-CA) issued a press release stating:

I've worked on this issue since the 2008 Metrolink crash near Chatsworth, Calif., which killed 25 and injured 135....The railroad industry has been lobbying furiously to delay the mandate, and the Senate Commerce Committee has put forward a bill granting a blanket extension for five to seven years. In my view, that is an extremely reckless policy... The Amtrak tragedy and other recent accidents that could have been prevented by PTC underscore the simple fact that further unnecessary delays are unacceptable and irresponsible. I'll continue the fight for the rapid installation of PTC nationwide to prevent more avoidable loss of life.

Needless to say, the rail industry and the Congress took a strategic pause and temporarily abandoned efforts to delay the PTC implementation deadline. Still, the end-of-year deadline loomed. Despite their feelings of political vulnerability, as of this writing, no member of Congress has experienced any negative political outcomes as a result of their support of a PTC extension.

The Deadline Extension

In September 2015, Senator John Thune (R-SD), Chairman of the Senate Commerce Committee, wrote to each of the railroads that were required to install PTC.

¹⁰⁷ Stolberg, Sheryl. "Brandon Bostian Agrees to Talk About Amtrak Derailment but May Recall Little". *The New York Times*. May 14, 2015.

¹⁰⁸ Laing, Keith. "Blumenthal: Don't push back deadline for rail safety improvements". *The Hill Newspaper*. August 12, 2015.

His letter requested a progress update on PTC installation and asked for a report on the railroads plans for January 2016 if the deadline was not extended. As the replies came in, he posted the letters on his committee website. Almost every reply indicated that the railroad would be forced to shut down most or all of its operations. In the case of passenger railroads, they would be forced to cease operations several days in advance of the deadline. In the case of the freight railroads, they would be compelled to begin clearing toxic-by-inhalation chemicals from their tracks on or around November 1, in order to ensure that all of the chemicals would be off the tracks by the end of the year.

The railroads also reached out to the customers whose shipments would be embargoed. Keep in mind that the railroads do not carry toxic chemicals for the fun of it: those chemicals make modern life possible. For example, chlorine is used to purify municipal drinking water and anhydrous ammonia is used to manufacture fertilizer. The AAR marshaled an effort of the major customers of the railroads, in a joint effort with passenger and commuter railroads, to raise the profile of the issue and emphasize that waiting until the last minute to extend the deadline would result in a major disruption of rail service. A report by the American Chemistry Council, which represents the nation's chemical companies, estimated that, "a rail service disruption lasting only one month would pull \$30 billion out of the U.S. economy and would increase the unemployment rate with a loss of 700,000 jobs. Household incomes would fall by over \$17 billion, depressing consumer confidence and spending. Vehicle sales would be driven down with 175,000 fewer cars sold, and housing starts would stall with almost 28,000 fewer homes built—all of which would have dire consequences for a

multitude of industries throughout the supply chain.”¹⁰⁹ In short, a new focusing event took shape: the looming threat of a nationwide rail shutdown that would disrupt the nation’s fragile economy and put the nation’s drinking water supplies in jeopardy.

Just as Kingdon would have predicted, faced with this looming crisis, the Congress acted with haste. On September 30, 2015, the “Big 4” bipartisan leaders of the House Transportation and Infrastructure Committee introduced H.R. 3651, the Positive Train Control Enforcement and Implementation Act of 2015. The bill took a measured but rigorous approach to the PTC issue, directing the Secretary of Transportation to review each railroad’s progress, while holding carriers strictly accountable for meeting enforceable implementation metrics. The bill would extend the deadline for PTC implementation to the end of 2018; provide the Secretary authority to extend the deadline on a case-by-case basis for up to two years beyond 2018, as long as there has been a good faith and transparent effort to install the technology; and allow railroads to phase in PTC implementation to ensure a safer and smoother testing and evaluation process.

On October 22, 2015, the full T&I Committee approved H.R. 3763, the “Surface Transportation Reauthorization and Reform Act of 2015.” Among other provisions, the bill included the text of the H.R. 3651 (PTC extension). At this point, the PTC issue hitched a ride on another crisis issue, an impending funding shortfall in the Highway Trust Fund Account (more on this in Chapter 2). On October 27, the House approved by

¹⁰⁹ American Chemistry Council Statement. “ACC Welcomes Senate Vote to Resolve Rail safety Issue and Help Avoid a Transportation Crisis.” Press Release of October 28, 2015.

voice vote H.R. 3819, a short-term highway trust fund extension bill containing language to extend the PTC deadline. On October 28, the Senate approved the bill under unanimous consent. On October 29, President Obama signed the bill into law.¹¹⁰

The final legislative language is very similar to what the House Committee introduced. It provides that within 90 days after enactment, a railroad may file an updated PTC implementation plan for approval by the Secretary of Transportation. Each plan must lay out a new implementation schedule, including specified milestones and metrics, to show that by December 31, 2018 equipment will be fully installed, spectrum acquisition will be complete, and system “activation” will occur. The Secretary of Transportation is directed to oversee each railroad’s progress, while holding carriers strictly accountable for meeting enforceable implementation metrics. The Secretary is able to provide the Secretary authority to extend the deadline on a case-by-case basis for up to two years beyond 2018, as long as there has been a good faith and transparent effort to install the technology; and allow railroads to phase in PTC implementation to ensure a safer and smoother testing and evaluation process.

It can be tempting to take a cynical view of Congressional activity. One cannot overlook the fact that the Senate took further action on October 28, 2015: it approved the nomination of Sarah Feinberg to be the Federal Railroad Administrator by unanimous consent.¹¹¹ The nomination was approved shortly after the Senate approved PTC extension legislation. In numerous appearances before Congress, Administrator

¹¹⁰ Public Law No: 114-73, Surface Transportation Extension Act of 2015.

¹¹¹ Library of Congress record of the Sarah Feinberg nomination timeline.

Feinberg stated she did not support a PTC extension and refused to speculate about the potential consequences for the rail system and American economy if the deadline was not extended. Speaking after both the PTC extension and Feinberg's nomination cleared the Senate, Sen. Barbara Boxer (D-CA) stood next to an image of the Amtrak crash and stated that the one bright spot in an otherwise disappointing day in the Senate was that Administrator Feinberg's nomination was approved. Boxer added that she was heartened that Feinberg had opposed the extension.¹¹²

Conclusion: The Imposition of the PTC Mandate and Its Late-Hour Extension Support Kingdon's Theory of Congressional Action

Kingdon's theory offers an explanation for when, why, and how Congress makes laws, and why decision makers pay attention to one thing rather than another.¹¹³ The theory assumes that three elements must come together for Congress to act: there must be a problem on the agenda, there must be an acceptable solution on the table, and there must be political will—often prodded by a Focusing Event—for action to take place. The PTC story follows his theory with remarkable precision. PTC (i.e. a rail safety solution) had been on the wish list of safety advocates like the NTSB for decades. With a rail safety bill already moving (i.e. on the agenda) when a horrendous rail accident occurred (i.e. a Focusing Event), the leading politicians in that state enacted the NTSB's suggested solution. Thus, as Kingdon's theory would predict, the PTC mandate was enacted with little debate or consideration for its technical feasibility.

¹¹² Boxer, Barbara, speaking on "Positive Train Control". 114th Congress, 1st sess. Congressional Record-Senate. (October 28, 2015): S7577.

¹¹³ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 1.

Likewise, as Douglas Arnold's theory holds, those same legislators hesitated in extending the deadline, fearing that another PTC-preventable rail accident might occur after the extension was enacted. One could certainly argue that the Congress' collective hesitation in extending the PTC implementation deadline, and the reality of the Amtrak accident, offers support for Arnold's theory of congressional action while rationalizing the politicians' extreme caution. As Senator John Danforth of Missouri lamented during his first reelection bid, "There's an absence of a long view: people are running for reelection the day they arrive."¹¹⁴

So why do decision-makers pay attention to one thing rather than another? Why do they either overreact or do nothing? It is because when experiencing the duress of a crisis, in their mind's eye, not acting is as just as much of an action as acting. Therefore, their tendency for stasis is overcome by a desire to do something to resolve the crisis. They have two reasons for acting this way: the potential for political benefit for leading on an issue of critical importance, and—perhaps more importantly—the potential to be punished politically for failing to lead during a crisis.

The next chapter examines whether or not Kingdon's theory holds up under the opposite scenario: when Congress does *not* act.

¹¹⁴ King, Anthony. "The Vulnerable American Politician". *British Journal of Political Science* 27 (1). Cambridge University Press. (1997): 3.

Chapter 2

Congress Doing Nothing:

Its Refusal to Increase Federal Truck Weight Limits *and* Inaction on Federal Excise Taxes on Gasoline

Scholarly research on when, how and why Congress acts on public policy issues is extensive. And for good reason; the legislative process in the U.S. Congress is comprised of a series of barriers to action.¹¹⁵ It makes sense to frame questions of Congressional activity from a perspective that focuses on when the body actually moves on policy. But in order to have a complete understanding of the institution, we should also concern ourselves with when Congress *does not* take action on public policy issues. What factors exist to discourage collective action in the chamber? When addressing Congressional activity from this perspective, it is especially interesting to consider why Congress does not act even when pressured by strong outside interests to do so.

This chapter turns from significant Congressional action related to railroad safety policy to examine Congressional inaction on two issues related to federal highway transportation policy. Specifically, it will make sense of why the Congress did not increase the statutory weight limit of trucks on federal highways, despite strong pressure from an array of well organized outside interest groups. It will also outline and analyze the extent to which the Congress has failed to increase the federal gas tax, or identify another permanent funding source, to pay for surface transportation programs,

¹¹⁵ Harris, Doug. Lecture during Contemporary Congressional Politics Class. The Johns Hopkins University. January 9, 2016.

despite the steep decline in the purchasing power of the tax, which is not indexed for inflation.¹¹⁶ It concludes that Congressional inaction on these aspects of federal transportation policy is due to two factors: 1) the extent to which members of congress seek to minimize political risk and 2) the lack of a major event to focus Congress's attention on the need to address this policy area.

In the background of this discussion is an untenable policy landscape, which makes Congressional inaction quite remarkable. Since the gas tax collects monies for federal, the federal trust fund that pays for surface transportation programs has faced continual funding shortfalls for the better part of a decade. As a result, the size federal surface transportation program as a whole, in terms of federal financial investment, has remained nearly unchanged since 2005.¹¹⁷ Given that 1) most Americans are impacted by the state of the American transportation system on a daily basis, and 2) in previous decades, members of Congress from both parties supported both gas tax increases and surface transportation authorization legislation, it is at first glance hard to understand the refusal to act on this policy.¹¹⁸ Likewise, given that federal truck weight limits have remained the same for more than twenty years,¹¹⁹ and increasing the limits has been a legislative priority of a wide range of well organized interest groups, Congressional inaction is notable.

¹¹⁶ Davis, Jeff. "A Decade of Bad Policy." *Transportation Weekly*. Volume 13 Issue 15. April 9, 2012: 3.

¹¹⁷ Davis, Jeff. "A Decade of Bad Policy." *Transportation Weekly*. Volume 13 Issue 15. April 9, 2012: 5.

¹¹⁸ Previous transportation bills passed overwhelmingly: TEA-21 in 1998(PL 105-78) passed the House 297-86 and the Senate 88-5; SAFETEA-LU (PL 109-59) in 2005 passed the House 412-8 and the Senate 91-4. Source: Library of Congress.

¹¹⁹ Federal Highway Administration. "Report to Congress on the Compilation of Existing State Size and Weight Limit Laws". U.S. Department of Transportation. October 1, 2012.

This chapter, in essence, provides new evidence of the merit of John Kingdon's theory of Congressional activity. Kingdon's theory states that the Congress is unlikely to take significant policy action in the absence of a *focusing event*: a major, public event that focuses the nation's attention on a particular policy area.¹²⁰ As Kingdon deftly describes an aspect of Congress's status quo bias it in a discussion of the debate surrounding whether or not truckers pay their fair share for highway usage. He writes, "Problems are not self-evident by the [factual] indicators," no matter how obvious they may be to those interested in policy change.¹²¹

In order to conduct a methodical exploration of this subject, this chapter is structured as follows. First, it will briefly review the Kingdon theory outlined in the previous chapter. Then it will explore how leading theories of Congressional activity offer support for the Kingdon theory and how the truck weight and gas tax policy situations are recent confirmations of the veracity of the thirty-year-old theory. Additionally, to provide context for how decisions are made in Congress, this review includes a brief overview of the federal system and also observes the high level of political vulnerability felt by American politicians.

Next, the chapter examines how a discrete policy outcome bolsters the Kingdon theory: Congressional inaction on raising federal truck weight limits in spite of pressure from strong interest groups. Then, the chapter examines how Kingdon's theory accounts for long-term Congressional inaction on federal excise taxes on gasoline. Finally, it

¹²⁰ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 94-95.

¹²¹ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 94.

determines that even though inaction on these issues may be frustrating to large segments of the American public and some interest groups, the status quo will likely persist until there is a focusing event.

The current political and policy situation offers no guarantee that there will be a focusing event to spur Congressional action in the coming years. Of course, something could happen to motivate the Congress to act, but unfortunately it will not be a sudden wave of altruism. As this chapter demonstrates, Kingdon's theory has proved accurate over the years. And the theory holds that for there to be Congressional action on transportation policy, there will probably have to be a major transportation catastrophe related to a lack of infrastructure investment that pushes the Congress towards an acceptable, readily-available policy solution to fund new infrastructure improvements.¹²² If that does not occur, perhaps a looming Highway Trust Fund "fiscal cliff" in 2020 will in and of itself serve as a focusing event. In other words, the implications for this theory are that it looks more and more like either some people have to die, or our highway trust fund has to go completely bankrupt before the Congress will take decisive action.

What Makes Congress Not Act? A Review of Literature on Congressional Action

When occasions present themselves in which the interests of the people are at variance with their inclinations, it is the duty of the persons whom they have appointed to be the guardians of those interests, to withstand the temporary delusion, in order to give them time and opportunity for more cool and sedate reflection. Instances might be cited, in which a conduct of this kind has saved the people from very fatal consequences of their own mistakes, and has procured lasting monuments of their gratitude to the men, who had courage and

¹²² Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 3-4.

magnanimity enough to serve them at the peril of their displeasure.¹²³ – Alexander Hamilton, Federalist No. 71.

Consider the structure of Congress and federal system itself. Before criticizing the Congress for failing to identify a sustainable funding source for surface transportation programs, or keeping truck weight limits the same for decades, one should ask whether that is even fair criticism. After all, as the Federalist Papers point out, the Congress was literally designed to make action slow in order to protect people from their own excessive passions. By design, House members are so regularly up for election that they are made to always feel politically vulnerable always. Indeed, there is a strong argument that a politician's concerns about electoral vulnerability related to the potential dangers of increasing truck weights or raising a regressive tax is a desirable feature—not a flaw—of the American political system. So in that case, the Transportation Committee's rejection of increasing truck weights (i.e. inaction on that policy from the perspective of proponents of changing the limits) can be interpreted as a result of members of Congress who specialize in transportation policy trying to do the best thing for the people they represent, ignoring the impassioned pleas of a few.

The Vulnerable American Politician

American politicians, particularly members of the House of Representatives, face incredibly frequent elections. The time period from when they are sworn in to their primary election is often less than 18 months. The truck weight vote examined below was held in the early part of an election year, just a few months before a number of

¹²³ Hamilton, Alexander; Madison, James; and Jay, John. *The Federalist*. Edited by Jacob E. Cooke. Middletown, Conn. Wesleyan University Press. (1961).

primary elections. It is no surprise that these politicians had a hard time with this decision—such a difficult time that some skipped the vote entirely. Anthony King observes that the difficulty in taking tough decisions is a function of the extreme feelings of vulnerability among American politicians.¹²⁴ And as Doug Arnold points out, the public opinion surrounding a vote at a particular time does not matter much. But it will matter if an incumbent's opponent raises the vote just before an election.¹²⁵

Members of Congress are well aware of their perilous political situation. This makes them cautious actors. It also makes them pay attention when people who care deeply about a particular issue above all others lobby for Congressional action. As Richard Fenno observes, members of Congress in their mind's eye see their geographical constituency in terms of some special configuration of the variables of whom and what exactly makes up the constituency.¹²⁶ In other words, when people become vocal and agitated about a particular issue, politicians are likely to pay attention to that group, if they assume members of that group are likely to vote and share their views with other voters.

The Influence of Organized Interests

Along these same lines, work by E.E. Schattschneider emphasizes the degree to which the strategic activities of those seeking to influence congressional activity can

¹²⁴ King, Anthony. "The Vulnerable American Politician". *British Journal of Political Science* 27 (1). Cambridge University Press. (1997): 20.

¹²⁵ Arnold, R D. *The logic of congressional action*. New Haven: Yale University Press, 1965. Page 65-68

¹²⁶ Fenno, Richard F. "U.S. House Members in Their Constituencies: An Exploration". *The American Political Science Review* 71 (3). (1977): 855.

make a difference. He finds that, “conflicts are frequently won or lost by the success that the contestants have in getting the audience involved in the fight or in excluding it, as the case may be.”¹²⁷ That is, if organized interests are able expand the playing field of people interested in a particular subject; it can tilt the political calculus even further to the side of caution. This strikes at the notion of organized lobbying being as much about determining what gets on the Congressional agenda, rather than taking sides on an agenda that Congress sets for itself. As Baumgartner observes, “Lobbying may have a stronger impact on the agenda-setting stage of the policy process, when government officials determine which issues merit significant attention and which issues can be safely ignored. Attention is a critical but limited resource in the policymaking process. Government officials have a limited amount of attention to devote to different policy problems.”¹²⁸ This supports the element of Kingdon’s theory that a topic is most likely to get on the Congressional agenda if there is an event to focus public and political attention on it. An organized lobby can attempt to create these focusing events, or raise the profile of issues through a coordinated campaign, but for Congress to take major action on an issue, there is rarely a substitute for a true focusing event.¹²⁹

Of course, the implication of this theory is that the Congressional agenda and Congressional activity are *not* determined by Madison’s “median voter.”¹³⁰ Nor is the

¹²⁷ Schattschneider, E. E. *The semisovereign people: a realist’s view of democracy in America*. Hinsdale, Ill: Dryden Press. (1975): 4.

¹²⁸ Baumgartner, Frank. et al. “Money, Priorities, and Stalemate: How Lobbying Affects Public Policy.” *Election Law Journal*. Vol. 13 No. 1, (2014): 201.

¹²⁹ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 95.

¹³⁰ See Chapter 1 page 10 for a description of the “Agenda,” as outlined by Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 3; Median Voter as outlined in *The Federalist No.*

agenda and related activity the happy ground between the various factions of American society. Instead, under the Kingdon model, Congress acts more like a curious raccoon: if there is a shiny snare in a forest of drab, the raccoon puts its hand in the snare. And once it finds itself trapped, it fights like hell to get out of the dangerous situation, with the likely result being irrational and sudden movements that only tighten the noose.

How do politicians in a majoritarian democracy manage to win elections despite ignoring pressing public policy issues? The enterprising research of Gilens and Page sheds light on this phenomenon. Using a sophisticated technique for measuring the influence of elites in American politics, they find empirical evidence that in the United States, the majority does not rule—at least not in the causal sense of actually determining policy outcomes. In fact, “When a majority of citizens disagrees with economic elites or with organized interests, they generally lose. Moreover because of the strong status quo bias built into the U.S. political system, even when fairly large majorities of Americans favor policy change, they generally do not get it.”¹³¹ This means that these extremely vulnerable politicians are best served by catering to the desires of organized interests most of the time. But that calculus is reversed if an issue becomes top of mind among the public, as is the case in the wake of a focusing event.

10.: Hamilton, Alexander; Madison, James; and Jay, John. *The Federalist*. Edited by Jacob E. Cooke. Middletown, Conn. Wesleyan University Press. (1961).

¹³¹ Gilens, Martin and Page, Benjamin. “Testing Theories of American Politics: Elites, Interest Groups and Average Citizens.” *Perspectives on Politics. American Political Science Association*. Vol 12/No. 3. September 2014: 576.

The Status Quo Bias and Congress Reflecting Human Nature

In the background of this entire discussion, one must remember that Congress as an institution, and at the individual actor level, has a bias for the policy status quo. As Frank Baumgartner explains, “Arguments for change generally are harder to make than are arguments in favor of the status quo...those seeking to protect the status quo maintain numerous tactical advantages over those proposing changes.”¹³²

While the Kingdon theory is largely focused on the individual choices of actors within Congress, an evaluation of his theory must also keep in mind that the Congress is a bureaucratic organization. Research by Bryan Jones indicates that, “...the paradox of organizations is that they provide stability, thus allowing people to coordinate their actions to achieve their goals, but they also must be adaptable in the face of changing circumstances, thus disrupting the stability they provide.”¹³³ Just as organizations like Congress provide a venue for a stable framework for collective action, getting to the action part is not necessarily a smooth or efficient process. Jones writes that, “...In most situations, human behavior is not consistently maladaptive. But it is often adaptive in an episodic and disjointed manner. Disjointed adaptations are so characteristic of human action that a single explanation is warranted. That explanation lies in the tension between goal-oriented adaptation and certain biological bounds on human abilities to adapt.” Jones explains that human behavior is mostly goal-oriented. However, it often

¹³² Baumgartner, Frank. et al. “Money, Priorities, and Stalemate: How Lobbying Affects Public Policy.” *Election Law Journal*. Vol. 13, No. 1. (2014): 205.

¹³³ Jones, Bryan D. *Politics and the Architecture of Choice: Bounded Rationality and Governance*. Chicago: University of Chicago Press. (2001): 5-6.

lacks clear pathways to achieving its goals, other than the overarching goal of political survival for each individual member.

Kingdon would point out that focusing events allow the public and Congress to direct their attention and efforts to a particular goal. Jones also writes that due to biological limitations, "...humans are disproportionate information processors [and] the formal organizations created by humans aid in adaptation by overcoming inherited limitations in adaptive abilities...[yet,] some of our limitations in adaptability will show through in even the most rational of institutions." The result is that our institutions—including Congress—will not react proportionately to incoming information, and outputs from the most rational of institutions will be disjointed and episodic."¹³⁴ Kingdon would call these disjointed, episodic outputs over-reactions to focusing events.

Criticisms of Kingdon's Theory

Kingdon's theory is criticized for not being an effective general theory of Congressional agenda-setting and activity because it is too dismissive of rational-actor and incrementalist models. In fact, Anthony King argues that Kingdon's theory amounts to simply, "a long check-list of factors that a social scientist interested in a specific instance of agenda-setting is advised to keep an eye out for." But for the purposes of someone interested in understanding, predicting and even influencing Congress, such a

¹³⁴ Jones, Bryan D. *Politics and the Architecture of Choice: Bounded Rationality and Governance*. Chicago: University of Chicago Press. (2001): 22-23.

checklist seems to be the perfect tool.¹³⁵ Certainly the most important question we must answer in evaluating a social science theory is whether or not it holds any predictive power. If the theory helps an interested person predict likely outcomes with a high level of accuracy, the theory is valid and useful. As the following discussion demonstrates, Kingdon's model would accurately forecast how and why Congress collectively rejected making changes to two fundamental aspects of federal transportation policy. Furthermore, Kingdon's theory is supported by his critic (King's) own theory that much of an individual Congressman's activity can be best understood by keeping in mind the extent to which American politicians are politically vulnerable.

Below is a second test of Kingdon's theory against two aspects of transportation policy.

Part 1: A Key Committee Overrules its Chairman and Refuses to Increase Truck Weight Limits

On February 2, 2012, the House Transportation and Infrastructure Committee held a markup of H.R. 7, a bill to reauthorize federal surface transportation programs. Less than 48 hours earlier, the text of the bill was released to the public for the first time. While close observers thought an amendment to modify federal truck weight limits might be considered during the markup, most were shocked that the base text of the bill essentially included the trucking industry's wish list.

¹³⁵ King, Anthony. "Review of Agendas, Alternatives, and Public Policies, Boston". *Journal of Public Policy* 5 (2). Cambridge University Press: (1985): 281–83.

The text of the bill amends federal highway rules to allow for both longer and heavier truck trailers, as well as multiple-trailer combinations. The trucking industry and its supporters had followed one of Schattschneider's basic rules, which states that, "A tremendous amount of conflict is controlled by keeping it so private that it is almost invisible."¹³⁶ By releasing the final bill language at the eleventh hour, opponents of truck weight changes faced long odds and the pro-truck weight increase coalition made significant progress in overcoming institutional status quo bias. However, a coalition organized in opposition to truck weight changes spent years preparing for this fight. And despite being faced with a tactical disadvantage of needing to amend the text of the base bill to win the fight, the railroad industry and its allied groups under the umbrella of the Coalition Against Bigger Trucks (CABT) won. The truck weight language was stricken from the bill and replaced with a study of truck weight issues, by an overwhelming Committee vote of 33-22.

Truck Weight Increase Opponents Expand the Conflict and Raise the Prospect of Electoral Risk

As Schattschneider observed, "it is the loser who calls for outside help".¹³⁷ Having lost the initial battle to keep these changes out of the base bill text, CABT called for outside help. First, anticipating the possibility of a truck size and weight fight, the coalition commissioned public polling in late 2011.¹³⁸ The survey found that voters

¹³⁶Schattschneider, E. E. *The semisovereign people: a realist's view of democracy in America*. Hinsdale, Ill: Dryden Press. (1975): 7.

¹³⁷ Schattschneider, E. E. *The semisovereign people: a realist's view of democracy in America*. Hinsdale, Ill: Dryden Press. (1975): 16.

¹³⁸ Coalition Against Bigger Trucks. "Americans Say Bigger Trucks Threaten America's Roadways, Greater Taxpayer Burden". *PR Newswire*. Press Release of April 20, 2011.

"overwhelmingly and consistently oppose allowing bigger, heavier trucks on American highways," with nearly three quarters of registered voters opposing such an increase, and half of those surveyed saying they strongly oppose the idea. These survey results were widely publicized via a press release and blast email to Congressional staff, wire services and major news outlets the day before the markup.¹³⁹ Thus, CABT expanded the scope of the issue from a narrow issue of trucking regulations to an issue of public safety, for which the public held strong opinions. In doing so, they played on the vulnerability of members of Congress by raising prospect of electoral risk for any member supporting heavier trucks.

Meanwhile, CABT ran advertisements on TV stations in the Congressional districts of Committee members. The ads showed the type of bigger and heavier truck configurations that would have been legalized by the legislation, weaving in and out of traffic and losing control on public highways. The ad ended with a message urging to the viewer to contact Congress to express opposition to bigger and heavier trucks. This greatly expanded the scope of the issue, as voters in the home districts of Committee members were informed of the public policy question—framed by opponents of the increase—and began contacting their Representatives. As Schattschneider observes, "the

¹³⁹ The author personally sent the survey results to every House Transportation Committee member office, except for the amendment cosponsors, Reps. Michaud and Schmidt. The survey results are available: Coalition Against Bigger Trucks. "Americans Say Bigger Trucks Threaten America's Roadways, Greater Taxpayer Burden". *PR Newswire*. Press Release of April 20, 2011

expansion of the conflict may have consequences that are extremely distasteful to the original participants.”¹⁴⁰ No politician enjoys fielding angry calls from likely voters.

CABT then took it to the next level: they called in the State Troopers. Few coalitions carry more weight in Washington, D.C. than law enforcement, and few people in our society know more about the impacts of highway accidents than the State Troopers who respond to them. CABT began collaborating with Trooper organizations years in advance, but did not activate the group until the fight was on. Dozens of State Troopers called their local Congressmen the day before the markup, and several even flew to Washington to meet with Committee members in-person. In discussions after the markup, several Committee members admitted that more than anything else, a visit from the head of their state’s trooper association helped inform their decision to oppose the truck weight limit changes.¹⁴¹ In fact, the day after the markup, the head of the American Trucking Associations contacted CABT and offered a truce: “call off the Troopers and stop running those damn ads, and we won’t fight this any more this year.”¹⁴²

Schattschneider argues that, “conflicts are frequently won or lost by the success that the contestants have in getting the audience involved in the fight or in excluding it, as the case may be.”¹⁴³ In this case, Schattschneider’s hypothesis appears to be accurate

¹⁴⁰ Schattschneider, E. E. *The semisovereign people: a realist’s view of democracy in America*. Hinsdale, Ill: Dryden Press. (1975): 7.

¹⁴¹ The author reports this from personal conversations with Committee members.

¹⁴² Source: Signed agreement between ATA and AAR, posted online February 9, 2012.

¹⁴³ Schattschneider, E. E. *The semisovereign people: a realist’s view of democracy in America*. Hinsdale, Ill: Dryden Press. (1975): 4.

because expanding the conflict to safety issues changed the Committee's collective political calculation. Today the 80,000 lb. federal truck weight limit and 53 foot trailer length limit remain in place thanks in large part to this age old political truism.

Additionally, several major organized labor unions publicly opposed truck weight increases.¹⁴⁴ We can assume labor's position must have helped firm up opposition among many of the Democrats, since "despite repeated claims of non-partisanship, organized labor has been one of the most partisan interest groups in American politics. The labor movement has historically had the closest and most enduring relationship with the Democratic Party of any organized constituency."¹⁴⁵ Taking a position contrary to major organized labor interests can increase a Democrat's political vulnerability.

Kingdon theorizes that the political agenda is determined by three core elements: the problems identified by the key actors, the solutions proposed, and the political will to do something about the problem.¹⁴⁶ The trucking coalition identified the problem (weight limits that hurt their business) and proposed a solution (increasing the weight limit). However, the combination of negative polling, local television advertising, and visits from highway patrol officers diminished the political will of the House members to support the change.

¹⁴⁴ The Railroad Labor Unions and Teamsters opposed truck weight increases. UTU Member Alert: HR 612 puts railroads' jobs at risk, while at the same time increasing taxpayer subsidies for heavy trucks. Retrieved 1/25/2016: <http://utu.org/wp-content/uploads/2013/03/Card1.pdf>

¹⁴⁵ Roof, Tracy. "Can the Democrats Deliver for the Base? Partisanship, Group Politics, and the Case of Organized Labor in the 110th Congress". *PS: Political Science and Politics* 41 (1). (2008): 85.

¹⁴⁶ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 94-95.

Truck Weight Increase Supporters Are a Powerful Constituency but Cannot Overcome Concerns of Political Vulnerability

Supporters of increasing truck weight limits established “The Coalition for Transportation Productivity.” The Coalition described itself as representing, “More than 70 of the nation’s leading food and agriculture associations– including the American Farm Bureau, American Fruit and Vegetable Processors and Growers Coalition, American Soybean Association, International Dairy Foods Association, National Cattlemen's Beef Association, National Grain and Feed Association, and the National Farmers Union.”¹⁴⁷ They argued that, “Federal weight limits have been stalled for more than 25 years,” and it is time to modernize trucking regulations. Their primary claim was that by increasing the weight of trucks, there would be fewer total truck trips to carry the same amount of freight. Their materials state the “80,000 lb. limit is arbitrary and challenges our safety, economy, environment and infrastructure, as companies shipping heavy goods must make more trips than necessary because their trucks hit the weight limit with significant space in the trailer.”

The further argued, “Fewer shipments improves efficiency, making American companies more productive and competitive... [and] freight hauled by trucks is expected to double by 2025.” Additionally, in order to push back against concerns of additional infrastructure damage, they recommended adding a sixth axle to heavier truck trailers to “spread out” the weight of the load. By increasing the weight limit to 97,000 lbs., the nation would, “save 2 billion gallons of gas per year and cut emissions

¹⁴⁷ Coalition for Transportation Productivity Press Release. “More than 70 Leading Agriculture Organizations Call on Congress to Pass the ‘Safe Trucking Act.’” Retrieved 1/25/2016: <http://transportationproductivity.org/templates/files/agriculture-letter-release.pdf>

19% per ton mile.” Finally, they argued heaviest trucks would enhance safety, since there would be fewer total trucks on the road. Their handout presented to Congressional office stated that, “...since the UK increased its weight limit to 97k in 2001, fatal truck-related accidents are down 35%.” They offered to pay slightly more in diesel fuel and tire taxes as a part of their proposal.¹⁴⁸

Kingdon would point out that even though enhancements to truck productivity are top of mind among this segment of American industry, a few calls from the local Farm Bureau and meetings with lobbyists representing trucking interests hardly amount to a focusing event. Under Kingdon’s theory, the Congress will only act on truck weight policy if attention is so focused on that issue that the benefits of increasing the weight limits overshadow voter concerns about highway safety. As Kingdon would put it, it is one thing to use one’s political influence to get an issue on the Congressional agenda, it is quite another for the Congress to act on the issue favorably.¹⁴⁹

One would assume this group, representing a broad swath of the American economy, might have fared better. But influence in Congress is divided by the Committee system. The main venue for legislation affecting most of the group’s members is the Agriculture Committee; whereas, the main venue for the CABT’s primary members—safety groups and the railroads—is the Transportation Committee. Most of the CTP’s members’ political efforts and strongest relationships are therefore on

¹⁴⁸ Quotes and Figures from Coalition for Transportation Productivity Fact Sheet. Retrieved 1/25/2016: <http://transportationproductivity.org/the-facts>

¹⁴⁹ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 1-3.

the Agriculture Committee and most of the CABT's members' strongest relationships are with the Transportation Committee. How might that have affected the outcome?

House Transportation Committee Action

As the Figure 2 below outlines, both sides of the truck weight issue worked with members of the House and Senate to introduce legislation. Members supportive of heavier trucks introduced bills to allow states the option to increase weight limits on highways within their borders. Opponents of heavier trucks introduced legislation to mandate an 80,000 lb. weight limit nationwide (eliminating heavier weight exemptions in several states). The lobbyists representing these interests then communicated their positions to House and Senate members and encourage cosponsorship.

Figure 2: Truck Weight Limit Increase Bills and Activity in the 112th Congress¹⁵⁰

Spring 2011: Supporters and Opponents of Increased Truck Weights Introduce Legislation		
Supporter Bill	Heavier Trucks: H.R. 763, Safe and Efficient Transportation Act of 2011	Rep. Michaud (D-ME); 2/18/11; 61 cosponsors; allows states to increase weight limit to 97,000 lbs.
Supporter Bill	Heavier Trucks: S. 747, Safe and Efficient Transportation Act of 2011	Sen. Crapo (R-ID); 4/6/2011; 5 cosponsors; allows states to increase weight to 97,000 lbs.
Opponent Bill	Weight Freeze: H.R. 1547, Safe Highways and Infrastructure Preservation Act	Rep. McGovern (D-MA); 4/18/11; 61 cosponsors; prohibits any weight increases
Opponent Bill	Weight Freeze: S. 876, Safe Highways and Infrastructure Preservation Act	Sen. Lautenberg (D-NJ); 5/3/2011; 4 cosponsors; prohibits any weight increases
Summer and Fall 2011: Aggressive Lobbying and Campaign Support Ensues	Throughout 2011, both sides take their message to Capitol Hill and contribute to the campaigns of incumbents supportive of their positions.	
Jan. 31, 2012: House Surface Transportation Reauthorization Bill Introduced	H.R. 7, American Energy and Infrastructure Jobs Act, Chairman Mica (R-FL)	Includes legislative text of H.R. 763/S. 747, to allow states to increase truck weight limits to 97,000 lbs.
Feb. 3, 2012: House Transportation and Infrastructure Committee Markup	Rep. Barletta (R-PA) offers amendment to strike truck weight provisions and replace with a Federal Highway Administration study of truck weight/length issues.	Barletta amendment wins 33-22. The markup lasts 14 hours. ¹⁵¹

¹⁵⁰ The Source for the legislative information is the Library of Congress database available at Congress.gov

¹⁵¹ Source: House Transportation and Infrastructure Committee Vote Record.

Feb. 9, 2012: Truce Between Railroad and Trucking Interests	Railroad Subcommittee Chairman (and future Full Committee Chairman) Bill Shuster (R-PA) brokers an agreement between the two sides so that there is not a destructive floor fight on the issue.	Association of American Railroads and American Trucking Associations sign agreement to oppose any floor amendments that would modify any of the truck size and weight provisions in the bill that was reported out of the House Transportation and Infrastructure Committee on February 3rd.
July 6, 2012, Moving Ahead for Progress in the 21st Century Act (MAP-21; PL 112-141) signed into law by President Obama	Senate bill did not include truck weight increase provisions. The Barletta study was shortened to two-years (the length of the bill).	Final Outcome: federal truck weight limits were not increased. The status quo was maintained, a victory for safety advocates and the railroad industry.

Members of Congress often seek seats on particular committees because they have a special interest in the issues under the Committee's jurisdiction. This self-selection process may result in Committee memberships that are not representative of the broader institution, and theoretically by extension, the nation as a whole.¹⁵² Given widespread public opposition to truck weight increases, perhaps this self-selection theory explains the Chairman's decision to include provisions to increase truck weights in his bill, since he could claim credit for the bill as a whole if it passed. The Kingdon theory assumes that those with influence are able to get things on the agenda. The theory also holds that Congress will not act on an issue in a way that increases political vulnerability if the public is paying attention. As a result, the same factors that led the Chairman to include the trucking industry's proposal in his bill also explains why most

¹⁵² Harris, Doug. Lecture during Contemporary Congressional Politics Class. The Johns Hopkins University. January 6, 2016.

of the Committee members rejected it, since they could be more easily targeted for their vote on a particular amendment.

In February 2012, there was a vote in the House Transportation and Infrastructure Committee on the truck weight issue. Truck weight increase supporters enjoyed an early victory, as the Chairman of the Committee, Rep. John Mica (R-FL) included the truck weight increase in his initial draft of the bill. However, Rep. Lou Barletta (R-PA) along with Rep. Jerry Costello (D-IL) introduced an amendment to strike those provisions and replace them with a requirement that the Federal Highway Administration conduct a three-year study of the effects of heavier trucks on infrastructure. After contentious debate among Committee members, the amendment was carried 33-22. In a profile in courage—demonstrative of American Congressmen’s recognition of their political vulnerability—four members who had been present for previous votes stepped out of the Committee room and “just happened” to miss the vote.

On the Senate side, truck weight provisions were not included in the bill; however, during the House/Senate conference to reconcile differences between the two chambers’ transportation bills, the House provision mandating a three-year Department of Transportation study of the potential impact of allowing increased truck size and weight configurations was shortened to two years. The final study results were released in April 2016. The report states the DOT cannot recommend any changes to truck weight limits due to study and data limitations. It notes the DOT, “...did not seek to satisfy the policy question as to whether a change in allowable truck sizes or weights would yield

positive impacts that could outweigh negative impacts.”¹⁵³ Thus, the status quo is maintained.

Part 2: Inaction on the Gas Tax

On August 10, 1993, President Clinton signed the Omnibus Budget Reconciliation Act, which increased the gas tax by 4.3 cents, for a total of 18.4 cents per gallon. It has remained 18.4 cents per gallon exactly since then—it is not indexed for inflation.¹⁵⁴ Gas taxes are not an ordinary tax; they are a user fee. That is, all of the funds collected are deposited into the federal Highway Trust Fund. All of the funds are then used to support transportation projects, primarily highway construction and maintenance. A full discussion of Congressional inaction on raising the federal gas tax exceeds the confines of this discussion. Instead, the following is an exploration of whether John Kingdon’s theory of Congressional action explains the status of the gas tax. Kingdon posits that it normally takes a focusing event to motivate Congress to take action on something.¹⁵⁵ Has Congress not acted to raise the gas tax because there has not been a focusing event?

Vulnerable Politicians Avoid Political Risk

The roots of today’s transportation funding struggles go back two decades, when conservative, anti-tax activists came to prominence in Republican leadership circles. In

¹⁵³ U.S. Department of Transportation Federal Highway Administration. “Report to Congress: Comprehensive Truck Size and Weight Limits Study”. April 2016: 2.

¹⁵⁴ Federal Highway Administration Website History Section. “When did the Federal Government begin collecting the gas tax?” Updated 11/18/2015.

¹⁵⁵ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 94-95.

the early 1990s, "...groups that helped bring the Republicans to power in congress...came to exert unprecedented influence on Capitol Hill as power players...Former House Majority Leader Tom Delay (TX) and conservative strategist Grover Norquist, who coordinate[d] the activities of the Leave Us Alone Coalition, sought to transfer the record levels of partisanship within the halls of Congress in the mid-nineties beyond the ideological groups that formed the party's base to the large world of lobbying and group politics."¹⁵⁶ The mission of these groups is simple: do not raise any taxes, ever. The government is already too large and the people are already over-taxed. Today, Norquist's group is known as "Taxpayers for Common Sense." They vehemently oppose any and all tax increases, including increases to the gas tax.¹⁵⁷

Perhaps some of the Congressional gridlock and inaction related to surface transportation policy can be explained by how few members of Congress today come from districts that are heterogeneous in terms of their partisan makeup. In this electoral context, why would a Republican Congressman take a political risk by increasing the gas tax—a regressive tax that nearly all of his constituents will be hit with—when his likely challenge will only come from the right?

Twenty years before the Norquist tax pledge, David Mayhew observed that when there are fewer marginal districts, there are fewer incumbent losses during

¹⁵⁶ Roof, Tracy. "Can the Democrats Deliver for the Base? Partisanship, Group Politics, and the Case of Organized Labor in the 110th Congress". *PS: Political Science and Politics* 41 (2008): 85.

¹⁵⁷ Taxpayers for Common Sense Blog. "Deal May Increase Transportation Spending, But at What Cost?" September 28, 2011.

national mood swings.¹⁵⁸ That is, the changes in majority party will result in fewer swing votes in the Congress. On the Republican side, perhaps that means there will be fewer representatives who will feel no need to associate with the Norquist crowd and therefore might be willing to support a gas tax increase. Relatedly, Mayhew recognized the trend of incumbency becoming a source of ever-increasing electoral power.¹⁵⁹ As he put it, "...the House seat swing is a phenomenon of fast declining amplitude and therefore of fast declining significance."¹⁶⁰ His conclusion more than 40 years ago was that if the trend continues, we will witness the continuation of, "the blunting of a blunt instrument...a weakening of the peculiar links that party has supplied between electorate and government."¹⁶¹ It seems his prediction was correct: in the 2014 elections, more than 90% of incumbents were reelected, which has been the norm for elections in this century.¹⁶²

Moreover, with fewer marginal seats in play, the big wave elections, such as 1994, 2006 and 2010 are typically strong enough to knock off all of the moderate members of one party or another. It is theoretically impossible during a wave election for moderates from both parties to be elected at the same time, and the minority party will always be more polarized in its policy views. Perhaps it is not that there are not

¹⁵⁸ Mayhew, David R. "Congressional Elections: The Case of the Vanishing Marginals". *Polity* 6 (3). Palgrave Macmillan Journals. (1974): 313-315

¹⁵⁹ Mayhew, David R. "Congressional Elections: The Case of the Vanishing Marginals". *Polity* 6 (3). Palgrave Macmillan Journals. (1974): 310

¹⁶⁰ Mayhew, David R. "Congressional Elections: The Case of the Vanishing Marginals". *Polity* 6 (3). Palgrave Macmillan Journals. (1974): 295

¹⁶¹ Mayhew, David R. "Congressional Elections: The Case of the Vanishing Marginals". *Polity* 6 (3). Palgrave Macmillan Journals. (1974): 314

¹⁶² Jacobson, Louis. "Congress has 11% approval rating but 96% incumbent reelection rate, meme says." *Politifact*. November 11, 2014.

very many moderate Republicans and Democrats who might find a way forward on transportation policy; it is that they just will never meet in the House or Senate chamber.¹⁶³

John Kingdon's work points out that federal inaction on transportation issues, contrary to popular belief, has long been the norm in American politics. He notes that the federal government got involved with the construction and maintenance of public roads incrementally, not by a focusing event. While the ever-vulnerable feeling members of the U.S. Congress are unlikely to take action on a policy matter in the absence of a focusing event, they are likely to allow programs to grow on their own, little by little. Kingdon notes that "If a program has basically settled down into a stable pattern, for instance, few questions are raised about it, there is little controversy surrounding it, and whatever changes that do occur are modest...For instance, federal highway funds were traditionally spent only for new construction."¹⁶⁴

The trouble with roads, of course, is that they deteriorate over time. Almost everyone in America uses the road system, so the need for maintenance becomes obvious to everyone. As a result, "The federal government gradually got into [roadway] maintenance..." rather than only supporting the construction of new roads. Federal authorities, "...gradually got into the maintenance business, not by suddenly declaring that they would do so but by gradually defining more maintenance activities as construction: replacement, then rehabilitation, then resurfacing, then bridge repair. But

¹⁶³ Harris, Doug. Lecture during Contemporary Congressional Politics Class. The Johns Hopkins University. January 16, 2016.

¹⁶⁴ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 152.

‘they didn’t really come out and call it maintenance,’ in the words of one lobbyist.”

Kingdon interviewed dozens of Congressional staffers and industry lobbyists, quizzing them on this issue. He noted that, “By the late 1970s when I asked whether the federal government actually was financing maintenance, one congressional staffer replied, ‘I think we crossed that watershed a year or two ago.’”¹⁶⁵

It is worth noting that back in the early 1980s, Kingdon even identified the truck weight issue: “Much of the discussion of equity in transportation concerns comparisons across the various modes. Railroads complain that waterways have an unfair disadvantage because of the free use of the Corps of Engineers’ navigation projects, and they claim that truckers are not paying their fair share of highway construction and maintenance.”¹⁶⁶ It seems that at least in terms of transportation policy, the same fights are likely to continue for decades, with few opportunities for major action or policy resolution in sight.

Gas Tax Struggles Are Not New

In June 1982, *National Journal* ran what is now a familiar cover story entitled “Our Crumbling Highways.” In it, the magazine observes that, “The federal gasoline tax was raised from 3 cents a gallon to 4 cents in 1984; that provided the highway trust fund with sufficient funds for nearly 20 years as the number of autos climbed and gasoline use soared. It has only been in the past few years that the combination of fuel conservation

¹⁶⁵ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 80.

¹⁶⁶ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 136.

and inflation in construction costs has eaten away at the fund's healthy surplus."¹⁶⁷ Since that time, inaction has been the dominant theme in highway funding policy. Rather than a complete accounting of Congressional inaction on highway funding beyond basic oversight, the following is a discussion of several major events that demonstrate the Congress's inclination to avoid making major decisions in the absence of a publicly visible crisis.

In 1998, a Machiavellian jurisdictional grab by House Transportation Committee Chairman Bud Shuster (R-PA) established a "common law" precedent in the TEA21 bill that circumvented the Budget and Appropriations Committees by tying highway trust fund spending levels directly to Trust Fund tax receipts.¹⁶⁸ This was great for the Chairman, who at that time had the ability to direct a portion of the spending to particular projects in order to obtain the support of members to pass the bill. But it also set a precedent that would allow future Congresses to ignore the need to raise the gas tax. Specifically, TEA21 (PL 105-178) set up a budgeting mechanism that added or subtracted highway dollars available for construction projects based on the estimates of future gas tax receipts. However, three years later, "...the Bush Administration dropped a bomb—due to the 2001 and 2002 tax estimates being unduly optimistic...the original

¹⁶⁷ Stanfield, Rochelle. "Our Crumbling Highways," *National Journal*, June 1982: 1041.

¹⁶⁸ King, David C. "The Nature of Congressional Committee Jurisdictions". *The American Political Science Review*. Vol. 88 (1994): 49.

TEA21 base spending level of \$27.7 billion would have to be lowered by \$4.4 billion to 23.4 billion—a drop of about \$9 billion from the prior year.”¹⁶⁹

In the face of this disaster, rather than increasing the gas tax, the House and Senate moved bills to restore funding by effectively raiding the trust fund’s surpluses. The long-term effect of this was an eventual depletion of the trust fund and a need for continual “bailouts” of the fund with General Treasury Funds, beginning in 2008. In 2005, Congress again acted in a way that avoided dealing with the gas tax by enacting spending levels in SAFETEA-LU (PL 109-59) that would further spend down trust fund revenues at an unsustainable rate.¹⁷⁰ As of this writing, a total of \$140 billion has been transferred from General Treasury Funds to the Highway Trust Fund in order to meet authorization levels. This figure does not include 3.4 billion transferred from the Leaking Underground Storage Tank Trust fund, nor the \$28 billion for HTF and \$8 billion for rail and transit included in the American Recovery and Reinvestment Act (PL 111-5).¹⁷¹ In 2015, the Congress enacted the first surface transportation reauthorization bill in ten years, the FAST Act (PL 114-94). It adds \$281 billion to the Highway Trust Fund; \$70 billion of that total is from General Treasury Fund transfers from non-transportation-related revenue sources. Without a highly public event to focus the national attention on infrastructure investment, the status quo once again prevailed.

¹⁶⁹ Davis, Jeff. “A Decade of Bad Policy.” *Transportation Weekly*. Volume 13 Issue 15. April 9, 2012: 4.

¹⁷⁰ Davis, Jeff. “A Decade of Bad Policy.” *Transportation Weekly*. Volume 13 Issue 15. April 9, 2012: 5.

¹⁷¹ Trombino, Paul. “AASHTO Summary of the New Surface Transportation Bill: Fixing America’s Surface Transportation (FAST) Act”. *American Association of State Highway and Transportation Officials*. April 16, 2015: 8.

Rather than deal with this glaring revenue short-fall, the bill reauthorizes the same 18.4-cent-per-gallon gas tax that has been in place since 1993.¹⁷²

Surely members of Congress would admit that there needs to be additional transportation infrastructure investment.¹⁷³ In order to increase investment, there must be a way to increase monies in the Highway Trust Fund. At a reception of transportation stakeholders celebrating the passage of the FAST Act in January 2016, House Transportation Committee Chairman Bill Shuster (R-PA) stated his intention to hold a meeting of stakeholders to work towards a solution to the funding crisis.¹⁷⁴ The Chairman is in luck, as the Association of American State Highway Transportation Officials (AASHTO) has a list of potential alternative funding sources.¹⁷⁵ It includes non-transportation options such as taxes on oil imports along with numerous transportation-related options in line with the traditional, user-funded system such as a tax based on the number of miles a vehicle travels. However, as longtime railroad lobbyist David Black, reported in an interview for this thesis, “An open question is whether declining to raise the gas tax is due to political fears or because the policy of relying on fuel taxes in an era of increasing fuel efficiency and electric vehicles is flawed. Perhaps it’s both and that’s why it’s so hard.”¹⁷⁶

¹⁷² Lang, Keith. “Negotiators Strike Deal on Five Year Transportation Bill. *The Hill*. December 1, 2015.

¹⁷³ Copeland, Larry. “In a jam again: Traffic congestion back on the rise.” *USA Today*. April 23, 2013.

¹⁷⁴ Source: the author was at the reception.

¹⁷⁵ In response to regular pleas for “ideas” to fund transportation programs, AASHTO has developed an extensive matrix of potential funding sources, available here:

<http://downloads.transportation.org/TranspoRevenueMatrix2014.pdf>

¹⁷⁶ Black, David, Railroad Lobbyist. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. June 17, 2016

Will Any Crisis Do?

Kingdon's theory holds that the Congress is only likely to act in significant ways in the face of an obvious, public crisis type of situation—a focusing event. Under this regime, the problem with roads is that they degrade slowly. The driver whose daily commute steadily becomes longer due to congestion does not suddenly call a news conference. The transit rider who increasingly laments to his boss that his “commute is killing him” is not literally killed by the delayed subway train. But if he were killed, the Congress might pay attention the next day.

Recently, the General Manager of the Washington, D.C. Metro transit system effectively created a focusing event by shutting down the system for a day. This directed Congressional attention to the troubled system, which suffers from a lack of capital investment, a poor safety culture and decades of mismanagement. Congress responded as Kingdon would have predicted, holding an oversight hearing on the DC Metro system just a few weeks later. During the hearing, members of both parties—whose attentions had not been focused on the local transit system prior to the sudden shutdown—expressed exasperation and frustration with the steady decay of the system over a period of decades. Indeed, the focusing event manufactured by Metro's leadership may result in a statutory change to how the federal government oversees Metro's safety. During the hearing, several members of the Committee stated they would prefer Federal Railroad Administration (FRA) oversight of the transit agency,

which is currently regulated by the Federal Transit Administration, since the FRA has more experience in rail safety inspections and has the authority to assess civil penalties for safety infractions.¹⁷⁷ Ironically, Metro's General Manager testified at the hearing that he is going to take a methodical approach to fixing the system rather than "lurching" from one crisis to another.¹⁷⁸

Possibly the closest the nation came to a focusing event related to highway infrastructure investment was the I-35 bridge collapse in Minnesota in August 2007. In that disaster, 13 people were killed and 145 injured when the bridge failed and crashed into the Mississippi River. While that tragedy spurred discussion about the need for infrastructure investment, apparently it was not a sufficiently terrible accident to generate enough support to increase revenue for transportation programs.¹⁷⁹

Does the lack of a Congressional response to this incident disprove Kingdon's theory? No, because the other side of Kingdon's theory is that for Congress to respond to a focusing event, there must be a readily available, acceptable solution to the problem.¹⁸⁰ The solution presented to the Congress to address this problem was crafted by Minnesota Congressman Jim Oberstar (D-MN), then-Chairman of the House Transportation and Infrastructure Committee. Oberstar released a draft bill in June 2009—almost two years after the bridge collapse. His bill was the culmination of a forty-

¹⁷⁷ House Oversight and Government Reform Committee. Hearing Examining the Safety and Service of D.C. Metro. April 13, 2016.

¹⁷⁸ McCarty, Robert. "Metro sank into crisis despite decades of warnings." *The Washington Post*. April 24, 2016.

¹⁷⁹ Sepic, Matt. "Minn. Settles last case in I-35 bridge disaster." *Minnesota Public Radio*. November 14, 2012.

¹⁸⁰ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 91.

year career in transportation policy on Capitol Hill. Oberstar released, “an ambitious vision for national transportation policy, representing a significant increase in funding and a focus on multimodalism.” Although it included additional funding for highways and bridges, it also would have created an Office of Intermodalism to implement projects of any kind (e.g. non-highway) and \$50 billion for high-speed rail.¹⁸¹ None of these non-highway policies respond directly to the need to better maintain and repair bridges like the one that collapsed. Thus, the solution was rejected as too grandiose and not responsive to the obvious problem of the bridge collapse. In fact, within hours of Oberstar circulating a legislative draft, “...Transportation Secretary Ray LaHood called for an extension of the 2005 highway bill—effectively cutting off long-term [highway program] expansion plans.”¹⁸² As the Washington, DC politics publication *POLITICO* reported in May 2010, “while the nation’s infrastructure continues to age and crumble, Washington is stuck with a neutered transportation chairman, a White House distracted by more pressing issues and Congressional leaders who lack the political will to raise gas taxes for a new \$500 billion measure.”¹⁸³

Then as now, everyone involved in transportation is aware of the years-long funding problem, but there is no consensus on how to fix it. Indeed, when it comes to raising the gas tax, just about every leader in Washington from Speaker Ryan to President Obama absolutely opposes the idea. In fact, shortly after former Secretary of Transportation Ray LaHood assumed his position in 2008, he floated the idea to a group

¹⁸¹ Freemark, Yonah. “Congressman Oberstar’s Transportation Bill Outline”. *Transportpolitic*. June 19, 2009.

¹⁸² Schor, Elana. “Oberstar stymied on transit bill”. *Politico*. May 17, 2010.

¹⁸³ Schor, Elana. “Oberstar stymied on transit bill”. *Politico*. May 17, 2010.

of reporters that a vehicle-mileage based user fee might be a future option for funding transportation programs. The next week he was called to the White House and reprimanded for the suggestion. From that point on, he and his successor Anthony Foxx have insisted the Congress, not the administration, should identify a funding source.¹⁸⁴

Implications: Will the Next Funding Crisis Be *the* Focusing Event?

Under current law, in 2020 there will be a \$20 billion annual shortfall in Highway Trust Fund revenues. In other words, in order to do another FAST Act type of bill, the Congress will have to come up with \$100 billion in non-transportation funding sources. Will this be the focusing event that is needed? Compounding this funding shortfall, in the final year of the bill's authorization (mid-2019 to mid-2020), there is a \$7 billion rescission of contract funds in order to reset the baseline funding levels back to 2015 levels (for political reasons). Perhaps this will be the necessary event that focuses the Congress's attention on the need to come up with a sustainable funding solution? There is plenty of time between now and then to select a palatable solution and put it on the agenda. For Congress to have to come up with a few billion per year to patch the trust fund is one thing, but cutting the program by \$7 billion and then having to come up with \$100 billion is something else entirely. Perhaps this major policy inflection point will be *the* focusing event for federal surface transportation funding policy.

¹⁸⁴ Davis, Jeff. "A Decade of Bad Policy." *Transportation Weekly*. Volume 13 Issue 15. April 9, 2012: 7.

Kingdon Was Right, What Are the Implications?

Returning to a discussion on the nature of the Congress and federal system itself, as the Federalists papers lay out, the Congress was designed with a bias for stasis. House members—and Senators in the modern era—are politically vulnerable and act accordingly. Even though major action on public policy is rare, it can happen if the institution's attention is properly focused. The Federalists built a Legislative Branch with so many procedures and checks that quick action responding to the excessive passions of a vocal minority faction is unlikely.

But is wishing that Congress be responsive to the people's need to travel on well-maintained, modern highway infrastructure an excessive passion? No, but simply complaining or being upset about a bridge collapse is not enough to get the Congress to act. As Kingdon points out, and the previous Chapter's Positive Train Control mandate amply demonstrates, a focusing event only leads to major action if there is a readily available, acceptable solution. Maybe over the next few years the Congress will actually work on identifying that solution so that it is ready to take action when the next focusing event occurs—be it a tragedy involving death and destruction or a fiscal nightmare. In the next chapter we shall examine ways the Congress might be improved so that it is better at identifying and enacting rational policies. Chapter three explores the notion that perhaps by identifying some readily available solutions to make the first branch of government function better, the Congress will act on a reasonable recommendation should there be an event that focuses attention on the need to make the institution more nimble.

Chapter 3

How to Improve Congress:

Options to Enhance the Quality of the Institution Policy Outputs

Why Does Congress Seem to Only Overreact or Do Nothing?

The previous two chapters documented examples demonstrating the validity of Kingdon's theory that Congress is most likely to clear a major policy item from its agenda in the face of a focusing event. Typically, the urge to take action on a pending policy item during the brief window of time when the public's attention is focused on the topic results in the Congress placing greater importance on getting something—anything—enacted while the crisis is “hot” than the need to enact the most effective, well considered policy. Thus, with the assistance of the Kingdon theoretical framework, Chapter 1 arrives at an understanding of why Congress enacted the mandate for railroads to install PTC systems by a date certain, without a clear understanding of the feasibility of the task and the likelihood of future inter-agency coordination problems. Likewise, absent a focusing event, the Congress is likely to avoid taking action on politically tricky policy matters because of the ever-present feelings of political vulnerability among the members. Again with the assistance of the Kingdon model, Chapter 2 outlines why Congress has declined to increase federal truck weight limits and procrastinated on addressing regular Highway Trust Fund shortfalls.

This chapter examines why the institution operates in the manner identified by Kingdon. After all, if political realities dictate that some of the most important policy

matters the Congress deals with in a given year are enacted while the institution is in “crisis mode,” it makes sense to consider any potential reforms to improve and strengthen the institution with this in mind. The purpose is to identify potential solutions for improving legislative policy performance.

This chapter examines factors contributing to the haphazard legislative process that resulted in the unworkable PTC mandate and the Congress avoiding dealing with the gas tax and truck weight limits altogether. It first considers the implications of a structural issue that reinforces feelings of political vulnerability among politicians: the gerrymandering of congressional districts.

Next, it documents a critical issue impacting the capacity of the Congress to enact legislation to establish well-informed policy for the nation: Congressional staff typically have little experience due to a lack of incentives to work for Congress for more than a few years.

Following the staff capacity discussion is an examination of the effects of the modern media climate on the Congress at the micro/individual level and macro/institutional level. It finds that today’s media climate rewards politicians for playing to the extremes of their political bases and often ignores politicians that actually enact smart policy.

The chapter then sheds light on how the activities of professional lobbyists impact the quality of policy outputs from the Congress. The Kingdon’s model identifies the agenda-setting role of well organized outside interest groups. The PTC, truck weight

and gas tax policy examples provide a clear example of the role of lobbyists in policy outcomes. The chapter contends that despite negative public perceptions about the profession, lobbyists perform an essential and largely unappreciated role in the American legislative process. This section also demonstrates how legislation regulating lobbying activities actually sustains and enhances the influence of the most well-organized and financed interest groups.

The fifth section of this chapter touches on how the lack of professional and social interaction by members of Congress today may contribute to the low levels of collaboration among members of different political parties. Kingdon contends the political agenda is derived from three elements: the problems identified by the key actors, the solutions proposed, and the political will to do something about the problem.¹⁸⁵ Former members of Congress—including former Senate Majority Trent Lott who was interviewed for this thesis—point to personal interaction among legislators as a key part of collectively identifying problems and solutions, and building political will.¹⁸⁶

The sixth section outlines proposals for who is best positioned to make changes to the institution that would allow it to be responsive to the desires of the public, while also making good policy. Finally, the paper closes with suggestions for additional areas of research related to these subjects—particularly the disruptive effects of the ban on Congressionally directed spending (earmarks).

¹⁸⁵ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 94-95.

¹⁸⁶ Lott, Trent. Former U.S. Senate Majority Leader. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. July 11, 2016.

The methodology employed in this chapter includes a comprehensive review of the relevant scholarly literature on the subjects. Information gleaned from this research is supplemented by interviews with current and former Congressional staff, members of Congress, and professional lobbyists. These first-hand accounts are invaluable for developing an understanding of how Congress actually behaves in modern times. The chapter's synthesis of scholarly literature on Congressional activity and interviews with practitioners of contemporary Congressional politics contributes to a greater understanding of why Kingdon's theory held true in the transportation policy examples outlined in the first two chapters.

Ideas for improving the functioning of Congress are as numerous as voters at the ballot box each November. Thomas Mann and Norman Ornstein pushed this conversation to the forefront in 2008 with their diagnosis of a litany of problems facing the contemporary Congress, including "a loss of institutional identity, an abdication of institutional responsibility vis-à-vis the executive, the demise of regular order (in committee, on the floor, and in conference), and the consequent deterioration of the deliberative process."¹⁸⁷ Their suggestions for strengthening the Legislative Branch include revising campaign finance law to level the playing field for challengers, reforming the redistricting process, revising the congressional schedule, changes the rules for debate, and reforms to earmarks, ethics and political action committees.¹⁸⁸

¹⁸⁷ Mann, Thomas E., and Norman J. Ornstein. *The broken branch : how Congress is failing America and how to get it back on track*. Oxford New York: Oxford University Press. (2008): 215.

¹⁸⁸ Mann, Thomas E., and Norman J. Ornstein. *The broken branch : how Congress is failing America and how to get it back on track*. Oxford New York: Oxford University Press. (2008): 229-236.

Predicting exactly which solution or suggestion is likely to have a significant impact is not possible. Despite the well-intentioned and disciplined efforts of several generations of scholars, Political Science is not a true hard science. If it were possible to devise a formula for success in the effort to improve the Congress, that formula would be included in this discussion. Jacob Straus identifies the perils with simply attempting to measure Congressional productivity using quantitative criteria such as the number Public Laws enacted, landmark legislation enacted, the number of bills introduced, the number of days in session, roll call vote figures, committee activities, or even the number of days in session. Straus finds each of these measures can be misleading, whether taken alone or in tandem with others.¹⁸⁹

The next best option is to explore the various ideas of leading thinkers in this field—particularly the practitioners with experience inside and outside of the institution—for making the First Branch of government work better. Those ideas are the substance of this chapter and they are offered here without excessive consideration of the political feasibility of each recommendation.

Excessive Gerrymandering of Congressional Districts Makes Politicians Feel More Vulnerable

“The polarization of the parties themselves and the constant campaign has become more of an overriding presence in the way the Congress conducts business. Oftentimes the political message supersedes the legislative agenda. Republican members who used to fear having no accomplishments to point to in a general election against a Democrat are now afraid of a right wing primary

¹⁸⁹ Strauss, Jacob. “Comparing Modern Congresses: Can Productivity Be Measured?” In *Enlightening Congress*. U.S. Congress, Senate Committee on Rules and Administration, 113th Cong., 2nd sess., S.Doc. 113039. Washington: Government Printing Office. (2014): 225-244.

opponent--especially one with millions of dollars to run ads." —Former House Republican Chief of Staff¹⁹⁰

Elections are an omnipresent reality in modern America. At any given time, there may be half a million elective offices either occupied or waiting to be filled.¹⁹¹ Perhaps the most critical factor determining who wins election to a given office is the makeup of the constituency. In most cases, state legislative bodies draw the boundaries of federal Congressional districts.¹⁹²

The political gap between the two major American parties is wider than ever. Recent work by Richard Pildes demonstrates that, "We have not seen the intensity of political conflict and the radical separation between the two major political parties that characterizes our age since the late nineteenth century...the parties have become purer and purer distillations of themselves."¹⁹³ John Gilmour's work describes the options before politicians in this system as the choice between getting a bill done or maintaining the upper hand on a political issue, and identifies the key implication of this political gulf. He states that, "When two sets of politicians seek to appeal to distinctly different constituencies and offer divergent policy prescriptions...we should expect a stalemate: no movement, and perhaps even no bargaining."¹⁹⁴ Pildes concludes that extreme

¹⁹⁰ Former House Republican Chief of Staff. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. July 8, 2016

¹⁹¹ King, Anthony. "The Vulnerable American Politician". *British Journal of Political Science* 27 (1). Cambridge University Press. (1997): 2.

¹⁹² Iyer, Sundeep and Gaskins, Keesha. "Redistricting and Congressional Control: A First Look". *Report for Brennan Center for Justice*. New York University School of Law. (2012): 1-5.

¹⁹³ Pildes, Richard H. "Why the Center Does Not Hold: The Causes of Hyperpolarized Democracy in America." *California Law Review* 99, no. 2 (2011): 273.

¹⁹⁴ Gilmour, John. *Strategic Disagreement: Stalemate in American Politics*. University of Pittsburgh Press. (1995): 132.

polarization—rather than a temporary aberration—is likely the permanent structure of American democracy. Therefore, it is critical to understand this phenomenon in order to work through it.¹⁹⁵ Although Pildes has come to believe that the pernicious effects of gerrymandering are probably exaggerated, and eliminating or diminishing these effects is likely overwhelmingly difficult,¹⁹⁶ the electoral imperative that permeates every decision by successful politicians indicates gerrymandering probably does matter a great deal. In any case, there is significant evidence that political polarization has direct impacts on legislative outcomes.

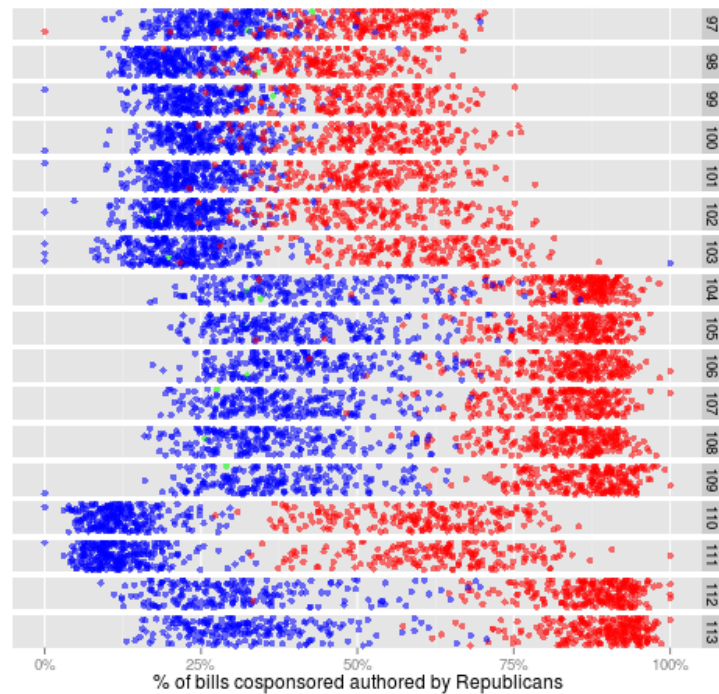
Figure 3 below, compiled by Adam Nordstrom using data in the Library of Congress database, illustrates the increasing polarization of the House of Representatives, in terms of the number of Republican-sponsored bills cosponsored by Democrats, and vice versa. The chart shows the total number of Republican bills cosponsored, divided by the total number of bills cosponsored for each Representative, from the 97th through 113th Congress (1981-2015). It shows that majority party members are much more likely to cosponsor bills authored by members of their own party, and much less likely to cross the party line to support a bill authored by the opposition party. The widening blank space between the two colors over time represents the declining frequency of cross-party support for legislation in recent years. This is

¹⁹⁵ Pildes, Richard H. "Why the Center Does Not Hold: The Causes of Hyperpolarized Democracy in America." *California Law Review* 99, no. 2 (2011): 274.

¹⁹⁶ Pildes, Richard H. "Why the Center Does Not Hold: The Causes of Hyperpolarized Democracy in America." *California Law Review* 99, no. 2 (2011): 308.

indicative of a decreased willingness for Representatives to cooperate with members of the other party to advance legislation.¹⁹⁷

Figure 3: The political polarization in the House of Representatives has grown over the past two decades.



The 2010 Elections and Subsequent Redistricting

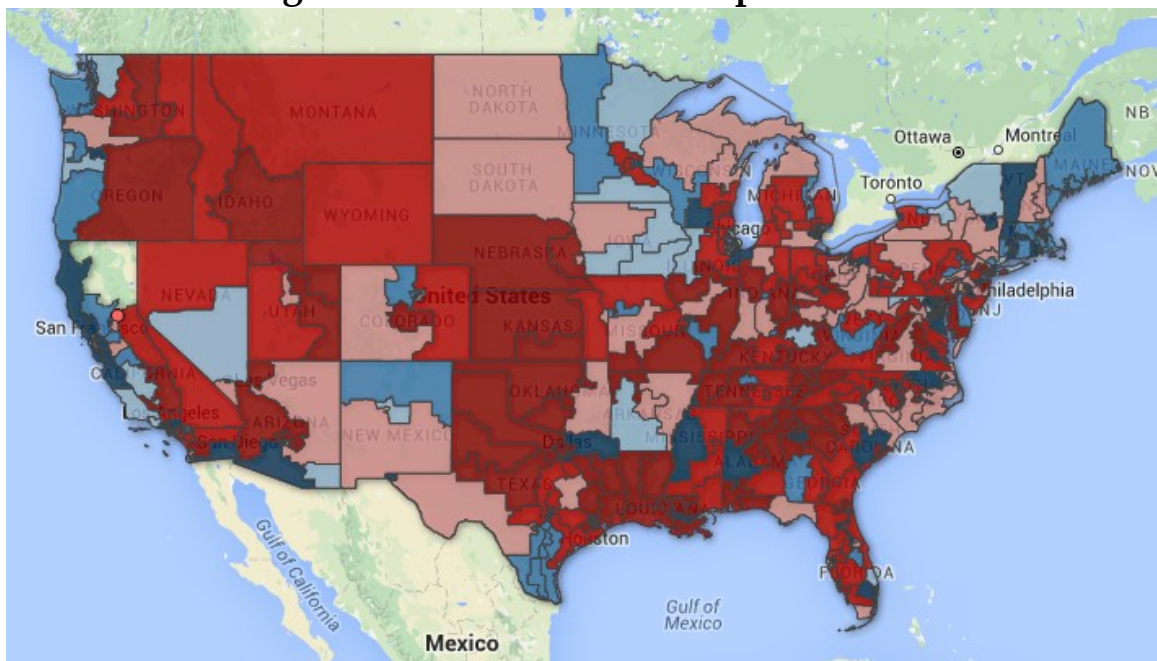
The Constitution mandates the reapportionment of Congressional seats after each decennial census.¹⁹⁸ This exercise includes re-drawing the boundaries of Congressional districts. After the Republican Party made significant gains in the 2010 election cycle, they controlled the redistricting process in 17 states (173 House districts), while Democrats only controlled the process in 6 states (44 districts). Commissions and courts determined the new boundaries in 15 other states, and 7 states did not engage in

¹⁹⁷ Nordstrom, Adam. "US House Cosponsorship Data Shows Increasing Polarization". *218and51 Congress by the Numbers*. November 11, 2014. Chart graphic reproduced with permission.

¹⁹⁸ U.S. Constitution. Article I, Section 2, Clause 3. Regarding the reapportionment of Congressional districts.

this process since they only have one at-large House seat. Unsurprisingly, “partisan actors – both Democrat and Republican – used redistricting to increase their political advantage.”¹⁹⁹ The rules of the redistricting process defined the results: more partisan districts, where an incumbent’s primary election is his/her only competitive race.²⁰⁰ We now know that it also resulted in Republicans holding more “safe” seats, cementing their House majority for years to come. The map in Figure 4 below illustrates how few competitive House districts remain.

Figure 4: Map illustrating the competitiveness of House districts. Lighter shades are more competitive.²⁰¹



Not pictured: Hawaii (dark blue) and Alaska (dark red).

¹⁹⁹ Iyer, Sundeeep and Gaskins, Keesha. “Redistricting and Congressional Control: A First Look”. *Report for Brennan Center for Justice*. New York University School of Law. (2012): 1-3.

²⁰⁰ Iyer, Sundeeep and Gaskins, Keesha. “Redistricting and Congressional Control: A First Look”. *Report for Brennan Center for Justice*. New York University School of Law. (2012): 18.

²⁰¹ Iyer, Sundeeep and Gaskins, Keesha. “Redistricting and Congressional Control: A First Look”. *Report for Brennan Center for Justice*. New York University School of Law. (2012): 6.

Highly Polarized Congressional Districts Eliminate Opportunities for Moderate Candidates

Primaries spread rapidly in American politics from 1903, when they became mandatory in the state of Wisconsin. By 1917, 44 states had mandated direct primaries for some or all of statewide elections. King concluded “The adoption of direct primaries—first for local and state offices, then for congressional nominations and finally for the presidency itself—has, of course, been a central factor in the weakening of American party organizations, especially since 1968.”²⁰² The adoption of direct primaries has played a chief role in weakening party organizations, especially in the second half of the 20th century.²⁰³ Meanwhile, as discussed in the previous chapters, “the American electoral system, especially as it has developed in recent decades, places America’s elective politicians in a highly vulnerable position... [more] than are the politicians of any other democratic country.”²⁰⁴

More House seats turned over in the 2010 midterm elections than any election in recent memory. The shift to Republican control in the House was two and a half times that of the 1994 election, eliminating Democratic gains in the previous two cycles. The 111th was the most liberal Congress in the past three decades; the 112th was the most conservative. The 2010 elections also had a profound effect on congressional

²⁰² King, Anthony. “The Vulnerable American Politician”. *British Journal of Political Science* 27 (1). Cambridge University Press. (1997): 11

²⁰³ King, Anthony. “The Vulnerable American Politician”. *British Journal of Political Science* 27 (1). Cambridge University Press. (1997): 11.

²⁰⁴ King, Anthony. “The Vulnerable American Politician”. *British Journal of Political Science* 27 (1). Cambridge University Press. (1997): 2.

polarization. Not only was the 112th House the most polarized on record; 2010 surpassed 1994 as the most polarizing election cycle.²⁰⁵

A guiding principle in politics is he who writes the rules can control the outcomes. In 1974, David Mayhew observed a trend of incumbency becoming a source of ever-increasing electoral power.²⁰⁶ As he put it, "...the House seat swing is a phenomenon of fast declining amplitude and therefore of fast declining significance."²⁰⁷ His conclusion more than 40 years ago was that if the trend continues, we will witness the continuation of, "the blunting of a blunt instrument...a weakening of the peculiar links that party has supplied between electorate and government."²⁰⁸ The numerous Democratic incumbents defeated in the 2012 elections lost because the borders of their districts moved, not because incumbency does not have advantages.

Big wave elections like 2010 eliminate the "marginal" or "moderate" members, as they are often called. These are the members with roughly equal party registration among their voters. Wave elections are typically strong enough to eliminate all the moderate members of one party or another; moderates from both parties will not be elected to the Senate at the same time and the House minority party becomes more politically polarized. As this effect builds steam over the years, elected officials increasingly anticipate the reactions of organized interests and/or politically active

²⁰⁵ Pildes, Richard H. "Why the Center Does Not Hold: The Causes of Hyperpolarized Democracy in America." *California Law Review* 99, no. 2 (2011): 294-5.

²⁰⁶ Mayhew, David R. "Congressional Elections: The Case of the Vanishing Marginals". *Polity* 6 (3). Palgrave Macmillan Journals. (1974): Page 310

²⁰⁷ Mayhew, David R. "Congressional Elections: The Case of the Vanishing Marginals". *Polity* 6 (3). Palgrave Macmillan Journals. (1974): 295

²⁰⁸ Mayhew, David R. "Congressional Elections: The Case of the Vanishing Marginals". *Polity* 6 (3). Palgrave Macmillan Journals. (1974): 314

citizens; however, there is little reason to believe this governing by anticipation brings policies in line with the views of most citizens.²⁰⁹

The final result of having little ideological overlap among the voters of congressional districts that elect members of opposing parties, the primary winners have, “no need or incentive to tack back towards the center—or any other particular place—for the general election.”²¹⁰ As fewer and fewer members today have overlapping constituencies, incentives to collaborate are diminished.²¹¹

When Only the Primary Election Matters, Legislating Becomes a Secondary Concern

When a member of Congress is only concerned about the primary election, taking extreme positions becomes more politically expedient than actually passing a bill, which requires compromising with other members. In that case, “passing policy is irrelevant; no one ever got defeated for failing to pass a bill, but they do sometimes lose because they are on the wrong side of an issue.”²¹² Unfortunately, the Congress cannot function without cooperation. Chapter one documents how low levels of cooperation on reauthorizing rail safety legislation left the *Rail Safety Improvement Act* sitting in draft form for 15 months, then suddenly selected as a solution to the problems exposed by the

²⁰⁹ Gilens, Martin and Page, Benjamin. “Testing Theories of American Politics: Elites, Interest Groups and Average Citizens.” *Perspectives on Politics*. American Political Science Association. Vol 12/No. 3. September 2014. Page 576.

²¹⁰ Pildes, Richard H. “Why the Center Does Not Hold: The Causes of Hyperpolarized Democracy in America.” *California Law Review* 99, no. 2 (2011): 309.

²¹¹ Former G.W. Bush White House and House Republican Staffer and Currently Registered Lobbyist. Interview with Harrison Wadsworth. Personal Interview. Spoke on condition of anonymity. Washington, DC. June 15, 2016.

²¹² Bond, John R. “A Silver Anniversary Retrospective on David Mayhew's Congress: The Electoral Connection”. *Political Science & Politics*. (2001): 253-254.

Chatsworth rail accident, and hastily amended to include the PTC mandate. Chapter 2 documents how uncooperative behavior by Representatives from the most polarized districts has disrupted efforts to modernize the gas tax in recent years.

While symbolic politics and posturing is as old as the nation itself, it has really come into its own in recent years. In the 1980s and 1990s, the various “wars” waged on drugs and crime were, “not really designed to reduce drug-taking or criminal activity; they seldom do either. They are really designed to impress, by deceiving, the voters.”²¹³ This is especially problematic in the Senate, which unlike the House is not a majoritarian body. “In most cases, the majority governs comfortably in the House. In the Senate, the minority has a distinct voice, and the majority often struggles to govern at all.”²¹⁴ Although a focusing event can motivate a Senator to remove a hold on a bill,²¹⁵ a Senator is unlikely to find a rationale for removing a hold without the public attention that comes with a focusing event.

In recent years, members of Congress have witnessed a number of shocking electoral outcomes that reinforced the rule of prioritizing one’s own electoral imperative over the functioning of the institution. In 2014, House Majority Leader Eric Cantor (R-VA) lost his primary to local college professor and first time candidate David Brat. In 2016, U.S. Rep. Renee Elmers (R-NC), an early Tea Party candidate, lost her primary to a challenger who attacked her from the right side of the political spectrum. Unable to

²¹³ King, Anthony. “The Vulnerable American Politician”. *British Journal of Political Science* 27 (1). Cambridge University Press. (1997): 19.

²¹⁴ Gold, Martin. *Senate procedure and practice*. Lanham, MD: Rowman & Littlefield Publishers. (2008): 10.

²¹⁵ Natural Resource Issues Lobbyist. Spoke on condition of anonymity. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. June 17, 2016

marshal the votes to keep the House functioning with so many highly polarized members in 2015, House Speaker John Boehner suddenly resigned.

Despite the common wisdom that defeats like Cantor's are rare, it is not so uncommon for House and Senate leaders to lose their elections. In 1994, first-time Republican candidate George Nethercutt upset Speaker Tom Foley (D-WA). In 2010, long-time incumbent Bob Bennett (R-UT) was defeated by upstart candidate Mike Lee. Although not as shocking as the defeat of a member of leadership, Bennett's Senate colleagues certainly took notice of his defeat. And of course in 1972, 29-year-old Joe Biden upset 12-year incumbent Senator Caleb Boggs (R-DE).²¹⁶ Clearly, it is completely rational for members of Congress to constantly look to their left or right shoulder in preparation for a contested primary. Today's incumbents are in considerable electoral peril. If they're not, they at least behave as if they are.

What are the implications of this difficult political operating environment? For one thing, retaining a House or Senate seat in the face of constant political exposure is expensive—much more expensive than low-exposure politics.²¹⁷

The end result of American politicians' vulnerability, which for House members now largely resides in the primary election process due to gerrymandering, "is that it makes it even harder for politicians in the United States...to take tough decisions: to court unpopularity, to ask for sacrifices, to impose losses, to fly in the face of the

²¹⁶ Blake, Aaron. "Eric Cantor and the biggest upset in history". *The Washington Post*. June 11, 2014.

²¹⁷ King, Anthony. "The Vulnerable American Politician". *British Journal of Political Science* 27 (1). Cambridge University Press. (1997): 13.

conventional wisdom—in short, to take decisions in what they believe to be their constituents best interests and in the national interests,” as opposed to their own personal electoral imperative.²¹⁸ Unfortunately, the uncompromising political situation in the House of Representatives has permeated the Senate. Many Senators first serve in the House, where they develop their brand of national politics while representing highly polarized districts.²¹⁹

People often assume that in politics and life, some sort of higher-level thinking or enlightenment must guide the process when it works well. That could not be farther from the truth. Unfortunately, “This reality is offensive to some people who would like the intellectual or spiritual to take precedence.”²²⁰ But it is just the facts. In the final analysis, extremely partisan Congressional districts diminish the citizenry’s opportunities to select elected officials. They reduce opportunities for collaboration among members of opposing parties. Reduced opportunities for collaboration result in less legislation with bipartisan co-sponsorship moving to the chamber floor, ultimately resulting in the enactment of less legislation outside the shadow of a focusing event.

²¹⁸ King, Anthony. “The Vulnerable American Politician”. *British Journal of Political Science* 27 (1). Cambridge University Press. (1997): 20.

²¹⁹ Drutman, Dr. Lee. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. June 16, 2016.

²²⁰ Rippetoe, Mark, and Lon Kilgore. *Starting strength : basic barbell training*, 3rd Ed. Wichita Falls, TX: Aasgaard Co. (2011): 6.

Insufficient Staff Capacity Contributes to Government-by-Crisis

Loreli Kelly identifies insufficient staff capacity as a leading problem contributing to the manic, government-by-crisis process identified by Kingdon. She claims:

The lack of shared expert knowledge capacity in the U.S. Congress has created a critical weakness in our democratic process. Along with bipartisan cooperation, many contemporary and urgent questions before our legislators require nuance, genuine deliberation and expert judgment. Congress, however, is missing adequate means for this purpose and depends on outdated and in some cases antiquated systems of information referral, sorting, communicating, and convening.²²¹

While scholars like King have focused on the purported downsides of the Legislative Branch itself being costly to administer in the above described political climate, if anything the Legislative Branch is woefully underfunded. Congress allocates itself less than .02% of discretionary federal spending. In real numbers, the Executive Branch comprises 180 agencies, 4.1 million civilian and active military employees, and a budget of \$3.9 trillion per year. The Legislative Branch consists of only a few of agencies, has 30,000 employees and uses only \$4.5 billion per year. While more resources are needed for the execution of laws than writing them, these figures are still far out of balance. As a result, the Executive Branch holds much more power in the government, even though it is far less democratically accountable.²²²

²²¹ Kelly, Loreli. 2012. "Congress' Wicked Problem". *New America Foundation Open Technology Institute*. Page 1.

²²² Kosar, Kevin, et al. "Restoring Congress as the First Branch". *R Street Policy Study No. 50*. Page 3

Congressional Staff Pay and Experience

Congressional staff work long hours in stressful work environments and earn between \$30,000 and \$50,000 annually. Turnover is high: a recent survey found 63 percent of staffers in D.C. want to find a new job, with most of them citing a “desire to earn more money” as the primary reason. Low- and mid-level staff earn 20 to 30 percent less than they would get in the private sector, and senior staff can likely double their pay overnight by leaving Congress.²²³ They must live in the Washington, DC region, where the cost of living is third highest among metropolitan areas in the country—seventh highest in the world. In June 2016, the average monthly rent for a studio apartment in D.C. was \$1,574 per month.²²⁴ Clearly, there are strong incentives discouraging talented people from remaining employed in the House or Senate once they have a basic level of experience and competency in their jobs. Kevin Kosar calls for a reality check on the need for expert staff to support legislators, writing “It is time to lay to rest the appealing notion of the earnest, amateur legislator who can appear at the Capitol three days a week and govern with pure horse-sense. The federal government is too huge, complex and relentless for that.”²²⁵

Congressional staff matter a great deal to daily and long-term functioning of the Congress. As Harrison Fox and Susan Webb Hammond observed more than forty years ago, staff expertise (or lack thereof), “...may alter the content of specific legislative

²²³ Goodin, Emily. “Congressional staffers say low pay, long hours has them eying new jobs”. *The Hill*. September 9, 2013.

²²⁴Source: Expatsian Cost of Living Index. <https://www.expatistan.com/cost-of-living/washington-d-c>

²²⁵ Kosar, Kevin, et al. “Restoring Congress as the First Branch”. *R Street Policy Study No. 50*. (2016): 3.

products, affect strategic maneuvering, or enhance the constituent-representative link. Staff resources are power... [and] influence the larger political spectrum.”²²⁶ As our economy, society and government has accumulated, it has grown more complex, difficult to understand, and tricky to regulate. All the while, the Congressional staff “brain drain” persists. As a result, the average staffer today is generally not very experienced and unable to, “maintain an informed understanding of the rules and regulations they are in charge of writing and overseeing...”²²⁷ Furthermore, despite the increase in the scale and complexity of governance, the number of staffers in congressional offices has remained nearly the same over the past thirty years.”²²⁸ Certainly, one reason the Congress continues to make poorly informed policy choices is its declining staff capacity.²²⁹ Figure 5 below illustrates recent reductions in the total number of House Committee staff.

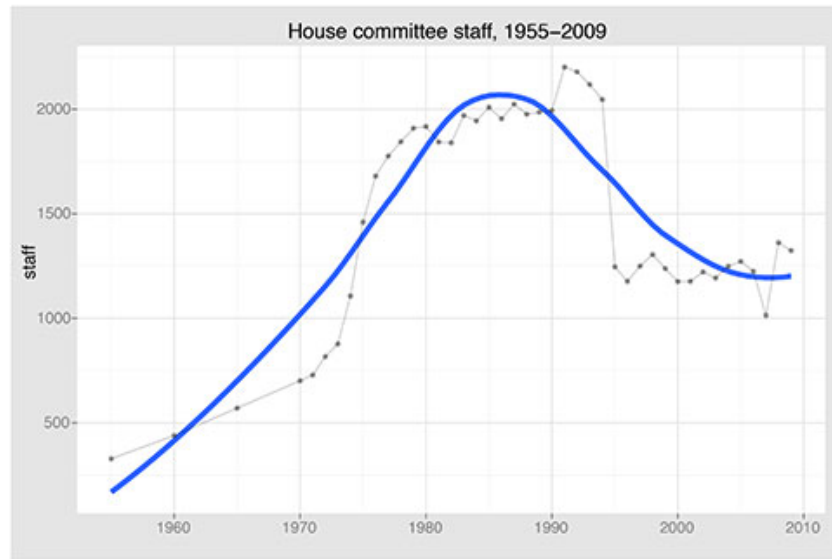
²²⁶ Fox, Harrison and Webb Hammond, Susan. “The Growth of Congressional Staffs”. *Proceedings of the Academy of Political Science* 32, no. 1. (1975): 112.

²²⁷ Drutman, Lee. *The business of America is lobbying : how corporations became politicized and politics became more corporate*. Oxford New York, NY: Oxford University Press (2015): 220.

²²⁸ Allard, Nick, *Lobbying is an Honorable Profession: The Right to Petition and the Competition to be Right*. “Stanford Law and Policy Review.” (2008): 43.

²²⁹ Drutman, Lee. *The Business of America is Lobbying: how corporations became politicized and politics became more corporate*. Oxford New York, NY: Oxford University Press (2015): 33.

Figure 5: House Committee staff size, 1955-2009²³⁰



This problem is unlikely to be corrected any time soon, as expanding the size of Congressional staff is not likely to go over well with voters. As Luntz observed, disdain of government employees is almost as high as that of lobbyists. It would be a heavy lift to convince people there is a difference between Congressional staff and “unelected bureaucrats.”²³¹ With most things in life, the quality of outputs is a function of the quality of inputs, and this seems to hold true in American government and politics as well. As long as legislative branch appropriations represent a tiny fraction of discretionary spending, Americans can expect more low-quality, bungled public policy outcomes like the PTC mandate and Highway Trust Fund insolvency.

²³⁰ Drutman, Lee and Teles, Steven. “Why Congress Relies on Lobbyists Instead of Thinking For Itself”. *The Atlantic*. March 10, 2015.

²³¹ Luntz, Frank, *The Language of Financial Reform*. Memorandum. 2010.

Causes and Effects of the Diminished Power of the Legislative Branch

Over the previous several decades, two factors have motivated a decimation of Congressional staff and institutional organizational capacity. The first is political optics, since “...what better way to show conservative voters back home that you’re serious about shrinking government than by cutting your own staff?” The second and more important reason has to do with long-term political strategy. The political mantra of “starving the beast” in order to reduce the power of the federal government has become a practical reality.²³² Starting with the Gingrich Revolution in 1995, continuing with the Tea Party Movement of 2011, and living on in today’s Freedom Caucus, a segment of the conservative political movement aims to defund and dismantle, “...the vast complex of agencies and programs that have been created by bipartisan majorities since the New Deal.” The idea is that the people who know these agencies and programs best are the most invested in maintaining them. These include professional Congressional staff, Congressional Research Service employees at the Library of Congress, and veteran committee chairs. None of these professionals will consent to the elimination of programs they specialize in overseeing, so those people themselves have steadily been eliminated.²³³

Ironically, this effort likely had the opposite effect. Federal spending has increased 50 percent since 1995—roughly keeping pace with population and economic growth. This growth is partially a consequence of limiting the Congress’ ability to

²³² Niskanen, William. “Limiting Government: The Failure of ‘Starve the Beast’”. *CATO Journal*. Vol. 26, No. 3 (Fall 2006): 554.

²³³ Kosar, Kevin, et al. “Restoring Congress as the First Branch”. *R Street Policy Study No. 50*. Page 4.

monitor an increasingly complex Executive Branch. For example, federal spending on Intelligence operations has roughly doubled since 1997; meanwhile, staffing of the Senate Select Committee on Intelligence has declined.²³⁴ Incredibly, the trend continues. House Republican leaders have reduced funding for the Legislative Branch by 20 percent since 2011.²³⁵ As conservatives continue to reduce Legislative Branch resources, they lament “judicial activism” and “executive overreach” in the other two branches. However, it is the dereliction of the Legislative Branch’s responsibilities that has authorized hyperactivity in the other branches.²³⁶

What Can Be Done to Make Congress Stronger?

Potential remedies to this problem include increasing staff salaries; establishing additional standing committees or offices within the Legislative Branch to conduct research; and modernizing the Congressional Research Service so that it suits the demands of 21st century American society.²³⁷ Other suggestions include Congress taking back the power of the purse by actually enacting Appropriations bills on a regular basis, including the use of earmarks; changing the budgeting process so that an automatic continuing resolution takes hold if a budget deadline is missed, in order to avoid showdowns that have resulted in recent government shutdowns; increasing Congressional oversight of the rulemaking process by mandating legislative review of

²³⁴ Kosar, Kevin, et al. “Restoring Congress as the First Branch”. *R Street Policy Study No. 50*. (2016): 4.

²³⁵ Kosar, Kevin, et al. “Restoring Congress as the First Branch”. *R Street Policy Study No. 50*. (2016): 6.

²³⁶ Kosar, Kevin, et al. “Restoring Congress as the First Branch”. *R Street Policy Study No. 50*. (2016): 10.

²³⁷ Kosar, Kevin, et al. “Restoring Congress as the First Branch”. *R Street Policy Study No. 50*. (2016): 6.

expensive new rules; and writing clearer statutes that reduce discretionary authorities of executive agencies.²³⁸

Today, public approval of the Congress is at record low levels. This section identifies some of the causes of its failings, which include mishandling the PTC mandate and failing to reliably fund the Highway Trust Fund. The ultimate result is that, “Congress struggles to make policy on complex issues while it equally lacks the wherewithal to effectively compete on substance in today’s 24 hour news cycle...Congress is not so much venal and corrupt as it is incapacitated and obsolete. And, in its present state, it cannot serve the needs of American democracy in the 21st Century.”²³⁹

The Contemporary Media Climate Rewards Showmanship Over Substance

“News outlets have figured out how to monetize anxiety. Viewership is benefited more by focusing on doom, failures, scandals, and lack of hope. A policy debate requires details, time and effort—the opposite of today’s media business model. People getting along and things working out does not make money for cable news.”²⁴⁰ –David Black, railroad lobbyist.

Newsgathering on Bills No Longer Pays the Bills for Media Outlets

Any discussion about how to improve Congress as an institution must also recognize the role of the institutions that translate Congressional activity to a language understood by voters: the news media. The business model that once supported and

²³⁸ Kosar, Kevin, et al. “Restoring Congress as the First Branch”. *R Street Policy Study No. 50*. (2016): 11.

²³⁹ Kelly, Loreli. 2012. “Congress’ Wicked Problem”. *New America Foundation Open Technology Institute*. (2012): 1.

²⁴⁰ Black, David, Railroad Lobbyist. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. June 17, 2016

rewarded diligent, time-consuming news-gathering does not compute in today's media climate. The remaining successful media operations increasingly rely on outrage to draw an audience. As a result, today's media climate rewards politicians for playing to the extremes of their political bases and often ignores politicians that actually enact smart policy. As one former House staffer puts it, "The media is so obsessed with scandal that even when the FAST Act was passed in 2015—a monumental achievement of Congressional productivity—the news that evening hardly covered it. For months and years of work, the public heard almost nothing about Congress actually getting something important done."²⁴¹

A contributing factor towards this media orientation is that journalists, in an effort to appear unbiased, provide excessive analysis of events, leaving their audience uninformed about core facts. Over time, the audience loses interest and confidence in journalists as purveyors of information and accepts an "infotainment" style of reporting. Thus, in an effort to deliver more than simple descriptions of politicians and their positions on issues, today's journalists and media producers rely excessively on interpretation over substance.²⁴² In the absence of a substantive, policy-oriented forum to debate issues, audiences rely upon journalists' and politicians' excessive analysis to learn about public policy issues.²⁴³

²⁴¹ Former G.W. Bush White House and House Republican Staffer and Currently Registered Lobbyist. Interview with Harrison Wadsworth. Personal Interview. Spoke on condition of anonymity. Washington, DC. June 15, 2016.

²⁴² Iyengar, Shanto. *Media politics : a citizen's guide*. New York: W.W. Norton & Co. (2011): 329.

²⁴³ Iyengar, Shanto. *Media politics : a citizen's guide*. New York: W.W. Norton & Co. (2011): 329.

This problem is only getting worse, as newspapers continue to struggle to find a working business model in the digital age. As Shudson and Downie observe, “Accountability journalism, particularly local accountability journalism, is especially threatened by the economic troubles that have diminished so many newspapers. So much of the news that people find, whether on television or radio or the Internet, still originates with newspaper reporting.”²⁴⁴ Without vibrant newsrooms at newspaper offices across the country, each year less and less hard news is investigated and reported. There are still several large city newspapers that maintain a staff of investigative reporters, but these reporters are unable to conduct the type of specific fact gathering necessary to explain the activities of members of Congress to their constituents.

One Democratic House staffer interviewed for this paper observed, “Members of Congress get information from newspapers—a problem in an era of newspapers shutting down operations. If your local paper has an expose on an issue, it matters. But those are rare.”²⁴⁵ This is concerning, as newspapers continue to shutter their offices and the few remaining operations typically reprint one another’s stories. What incentive does a member of Congress have to work on difficult policy issues if he will never receive credit from the most popular media sources?

²⁴⁴ Downie, Leonard and Shudson, Michael. *The Reconstruction of American Journalism*. Columbia Journalism Review. December 2009.

²⁴⁵ Current House Democratic Member Personal Staffer. Spoke on condition of anonymity. Washington, DC. June 17, 2016.

The Rise of “Outrage Media”

One could argue the “outrage media,” – discourse meant to provoke emotional responses through the use of sensationalism, ridicule and misleading information²⁴⁶ – and Republican Party each have a covert contract with the other as they pursue complimentary objectives. Media scholars Berry and Sobieraj astutely observe that, “The outrage media served as a communications link, the central nervous system for an insurgency within the Republican Party”²⁴⁷ Just as the outrage media has increased its capacity to frame the issues of debate, it has also increased its ability to disrupt government institutions and the world economy.²⁴⁸ In 2011, as a direct consequence of political brinksmanship stirred up and propelled by outrage industry demagoguery surrounding the need to raise the U.S. debt ceiling, the U.S. Treasury’s credit rating was downgraded.²⁴⁹

Some journalism experts are optimistic about the future of their profession. For one thing, today’s media environment offers new opportunities for citizen journalists—and just about anyone to be heard. But we still do not have a way for disciplined, professional news gathering organizations to earn enough revenue to sustain their operations. In other words, lots of new is great, but a newsroom is essential. Newsrooms gather, analyze and investigate. They provide money, logistics and legal services. And

²⁴⁶ Berry, Jeffrey M., and Sarah Sobieraj. *The outrage industry : political opinion media and the new incivility*. Oxford New York: Oxford University Press. (2014): 7.

²⁴⁷ Berry, Jeffrey M., and Sarah Sobieraj. *The outrage industry : political opinion media and the new incivility*. Oxford New York: Oxford University Press. (2014):179.

²⁴⁸ Berry, Jeffrey M., and Sarah Sobieraj. *The outrage industry : political opinion media and the new incivility*. Oxford New York: Oxford University Press. (2014): 200.

²⁴⁹ Riley, Charles. *S&P downgrades U.S. credit rating*. CNN Money. August 6, 2011.

its work is generally respected and not ignored. The challenge we must confront is how to turn moment of transformation into reconstruction. Unfortunately, the way the Congress offers itself to the media compounds many of the problems facing the institution.

The CSPAN Effect: Ideological Showhorses Over Pragmatic Workhorses

“I sponsored the House resolution to televise Congress. It’s bad...eliminating any opportunity for real debate. But this is America, the gallery is already open, so Congress had to go on TV.” –Former Senate Majority Leader Trent Lott²⁵⁰

The first television feed from the floor of the House of Representatives was transmitted on March 19, 1979. In 1986, the Senate voted to approve televising their floor proceedings as well. Soon thereafter, CSPAN began covering Committee hearings.²⁵¹ Literature on the effects of televising Congress is extensive and a comprehensive consideration of those writings is beyond the scope of this discussion. But one thing that is clear is that televising floor proceedings in the House and Senate transforms the legislative process from a semi-private deliberative procedure to a public performance.²⁵²

From the start of the modern, “CSPAN” era of Congress, there was no correlation between a member’s actual legislative accomplishments and television coverage. Let’s call this the “CSPAN effect.” Tim Cook found that “In the 96th Congress [1979-1981], even after the introduction of televised floor proceedings, leadership status

²⁵⁰ Lott, Trent. Former U.S. Senate Majority Leader. Referring to his service in the House. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. July 11, 2016.

²⁵¹ CSPAN historical information obtained from CSPAN’s website: <http://www.c-span.org/about/history/>

²⁵² Drutman, Dr. Lee. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. June 16, 2016.

and seniority remained crucial through reduced predictors of media visibility, both in print and on the air. Yet in some ways, television coverage of the 96th Congress was actually kinder to established powers: committee chairs and ranking members were reported over and above their length of service.”²⁵³ Several years later in 1986, Cook discovered that, “leadership and seniority remain central determinants of media visibility, either before or after the introduction of televised floor proceedings, even though these proceedings [were] presumed to be another centrifugal force dispersing power among House members.”²⁵⁴ This is no longer the case.

Of course, the President remains the only member of the government with a near guarantee of obtaining extensive news coverage on any given day. Even as far back as the Cook study of the mid-1980s, it was clear that the average member of congress struggled to obtain news coverage by simply executing his official duties. Indeed, “...with the exceptions of those accused of impropriety, those running for other office, and those with more extreme and (usually) more liberal views, few representatives have regular, consistent visibility in the media if they are neither senior members nor leaders.”²⁵⁵ So what is a back-bench House or Senate member supposed to do to obtain free media coverage, if his/her execution of daily duties is insufficient to attract the type of coverage that would be carried on the local news back home? The simple solution is to gin up controversy, advocate for staunchly partisan positions, or investigate a

²⁵³ Cook, Timothy E.. “House Members as Newsmakers: The Effects of Televising Congress”. *Legislative Studies Quarterly* 11. (1986): 219.

²⁵⁴ Cook, Timothy E. “House Members as Newsmakers: The Effects of Televising Congress”. *Legislative Studies Quarterly* 11. (1986): 221.

²⁵⁵ Cook, Timothy E. “House Members as Newsmakers: The Effects of Televising Congress”. *Legislative Studies Quarterly* 11. (1986): 223.

scandal. In the CSPAN era, non-leadership members have to be over the top to get noticed.

CSPAN also eliminates opportunities for Congressmen of both parties and their leadership teams to interact regularly on the chamber floor. Once members were able to monitor floor action from their offices rather than in person, "...mediated congressional leadership [became] more ideological and less pragmatic."²⁵⁶ By 1996, Speaker Gingrich suspended daily briefings. As Speaker he had control of the House agenda and therefore what CSPAN's cameras would transmit on a daily basis. Gingrich discovered that he could get his message out better and without a filter by pushing out briefing documents rather than responding to reporter inquiries.²⁵⁷

The consequence of the CSPAN era is a House and Senate membership that is more ideological and less collaborative. Every speech aimed at the cameras in order to reach one's primary electorate by taking hard lines on issues makes collaboration with colleagues less likely. Likewise, every day spent monitoring floor activities, without being on the floor and participating in the process, is a lost opportunity to meet with other members of the body. From a purely sociological perspective, it is much more difficult to ignore the appeals for collaboration with members of the other party when that member is standing right in front of you. From a political perspective, it is difficult for the Speaker to craft an agenda suiting the needs of the members if those members are

²⁵⁶ Harris, Douglas B. "The Rise of the Public Speakership". *Political Science Quarterly* 113 (2). (1998): 208.

²⁵⁷ Harris, Douglas B. "The Rise of the Public Speakership". *Political Science Quarterly* 113 (2). (1998): 211.

rarely seen.²⁵⁸ In an earlier era, members who returned to their districts each weekend were outliers, mostly from the East Coast, known as the “Tuesday-to-Thursday Club”. It was thought they were skirting their legislative responsibilities by leaving Washington. Today, just about the entire Congress is a member of that club.²⁵⁹

Initially, scholars assumed the effects of televising the House would largely be, “more of a resource than a hindrance for congressional leadership.” When Cook studied the issue in 1986, he noticed, “...television coverage in the 96th Congress was actually kinder to established powers: committee chairs and ranking members were reported over and above their length of service.” He also found ethical accusations garnered more media attention than any other issue. Cook failed to foresee the degree to which individual, low-ranking members would find ways to leverage the power of CSPAN’s floor coverage and other media elements to constantly challenge Congressional leadership.²⁶⁰ In 2015, for example, third-term Representative Daniel Webster (R-FL) organized like-minded junior members and led a successful coup against House Speaker John Boehner (R-OH) by leveraging the conservative media. Shortly after that, Webster led another successful coup against Majority Leader Kevin McCarthy’s (R-CA) candidacy for Speaker, in part by raising ethical questions about McCarthy.²⁶¹

²⁵⁸ Harris, Douglas B. “The Rise of the Public Speakership.” *Political Science Quarterly* 113, no. 2 (1998): 208.

²⁵⁹ Fiorina, Morris P. “Congress: Keystone of the Washington Establishment, 2nd Ed.” *Yale University Press*. New Haven, Ct. (1989): 91-92.

²⁶⁰ Cook, Timothy E. “House Members as Newsmakers: The Effects of Televising Congress.” *Legislative Studies Quarterly* 11, no. 2 (1986): 219.

²⁶¹ Gehrke, Joel. “The Surprisingly Diverse Appeal of Daniel Webster’s Candidacy for Speaker.” *The National Review*. October 12, 2015.

Cook was right that junior members could only make the news by taking extreme, often more liberal positions. But he did not realize this would come to define the political atmosphere of the House in the early 21st century, this time from the conservative side.²⁶²

Not all of this can be attributed to CSPAN or the general increase in members of Congress appearing on television. CSPAN's cameras started rolling, "...with the idea of increasing transparency; however, at that time most of the legislative process had already left the floor...Until the 20th century, Congressmen either did not have staff or had very little staff. So they didn't have an ability to get into the details. Committee hearings at that time were actually used to convey information. Today, most legislation is staff-driven. The member receives the bill as a nearly finished product."²⁶³

The CSPAN effect exists in Presidential politics as well, although not directly because of CSPAN. As a natural resource issues lobbyist with two decades of experience in the White House, Congress and government relations points out, "If the CSPAN effect didn't matter, John Kasich or Jeb Bush would be the Republican nominee right now. They were the most qualified, but not as exciting on TV as Donald Trump. The media used to go more in-depth into policy questions; now, it's all about showmanship."²⁶⁴

²⁶² Cook, Timothy E. "House Members as Newsmakers: The Effects of Televising Congress." *Legislative Studies Quarterly* 11, no. 2 (1986): 223.

²⁶³ Former House Democratic Communications Staffer. Spoke on condition of anonymity. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. June 19, 2016

²⁶⁴ Natural Resource Issues Lobbyist. Spoke on condition of anonymity. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. June 17, 2016

Furthermore, in the social media era, the CSPAN effect has modulated and grown in its impact. As David Black points out, “Social media accelerates the pace of reactions to events and their impact. It also makes focusing events interactive: the audience itself, comprised of constituents and voters, is a participant.”²⁶⁵ In the Kingdon model, this means further compressing the fleeting focusing event legislative window,.

The Role of the Mass Media in the Legislative Outcomes of Focusing Events

Clearly, mass media influences how members of Congress execute their official duties.²⁶⁶ In the wake of the Metrolink accident in California—the focusing event that spurred Congressional action on the PTC mandate—media outlets displayed horrific images of shredded rail cars that in an instant were transformed from comfortable conveyances for people going about their daily business to torn and shattered bits of steel that killed 26 and maimed 135 innocent passengers. In the wake of the accident, mass media outlets played a role in transmitting the horrific images and personal stories associated with the tragedy, and repeating claims that a GPS-based PTC system could have prevented the accident altogether.

Two days after the accident, the *New York Times* ran a story, “Warning System Could Prevent Train Crashes,”²⁶⁷ which stated a PTC system could have prevented the accident, without any discussion of the feasibility of installing such a system. On the

²⁶⁵ Black, David, Railroad Lobbyist. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. June 17, 2016.

²⁶⁶ Cook, Timothy E. 1986. “House Members as Newsmakers: The Effects of Televising Congress”. *Legislative Studies Quarterly* 11. (1986): 223.

²⁶⁷ Archibold, Randal. “Warning System Could Prevent Train Crashes”. *The New York Times*. September 14, 2008.

same day, the national outlet *ABC News* televised a story claiming, “New Technology Could Have Averted Los Angeles Train Crash”. The story repeated FRA and NTSB claims that, “A coast-to-coast monitoring system that would have prevented last week’s train collision that killed 26 commuters in California could be available in five years.”²⁶⁸ In addition to reporting on how a PTC system could have prevented the accident, media outlets reported on the human tragedy of the incident. One *New York Times* headline four days after the accident read, “In Crash, Riders had Destinations and Death in Common,” with photos and biographies of the victims.²⁶⁹ There is absolutely no doubt that the Chatsworth train collision of September 2008 was horrific. Likewise, there is little doubt a functioning PTC system would have prevented it. However, just because a PTC system could have prevented it does not mean the technology was readily available, as outlined in Chapter 1.

Regardless, these media stories contributed to the establishment of a consensus among the members of Congress that became the leading advocates for the PTC mandate. Or as Kingdon would put it, they became policy entrepreneurs who, “...try to highlight the indicators that so importantly dramatize their problems... [knowing] that focusing events can move subjects higher on the agenda...in the pursuit of their own goals, they perform the function for the [political] system of coupling solutions to problems, problems to political forces, and political forces to proposals.”²⁷⁰ Sometimes

²⁶⁸ Heussner, Ki Mae. “New Technology Could Have Averted Los Angeles Train Crash”. *ABC News*. September 16, 2008.

²⁶⁹ Steinhauer, Jennifer. “In California Train Crash, Riders Had Destinations and Death in Common”. *The New York Times*. September 14, 2008.

²⁷⁰ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 204-205.

these entrepreneurs are ambitious members of the bureaucracy—like the NTSB official who claimed GPS-based PTC was an off-the-shelf technology.²⁷¹ Other entrepreneurs are members of Congress pushed to action when the media raises the saliency of a potential solution to an obvious problem. The relationship between the media and political forces becomes problematic when the media values sensationalism over substance. In the PTC example, news reports implying that dozens of people were killed and injured due to the railroad industry's negligence in deploying a particular safety technology are more sensational and compelling than a story without a "bad" actor to point to.

How to Make the Media Great Again

Scholars of media and politics have proposed a multitude of ways to encourage media outlets to engage in more hard news reporting and investigations. One idea is for non-profit institutions to monitor news organizations and critique them for the substantive content of their programming. News outlets could be rated on the substantive content of their programming, in order to make people aware of the problem and improve the quality of content. Along the same lines, newspapers should be recognized when they go beyond a single editorial column when endorsing or criticizing candidates. Instead, they should publish a series of articles. Although some argue that the electorate's low-information is inconsequential, research indicates people are willing to change their minds on an issue when provided with information.²⁷²

²⁷¹ Heussner, Ki Mae. "New Technology Could Have Averted Los Angeles Train Crash". *ABC News*. September 16, 2008.

²⁷² Iyengar, Shanto. *Media politics : a citizen's guide*. New York: W.W. Norton & Co. (2011): 330.

Another suggestion is to simply return to a more partisan press. Attempts to avoid bias in news coverage result in non-information and excessive analysis. There are some objective facts in policy debates and politics. Pretending otherwise is disingenuous and unconstructive. For this reason, several scholars have put forth the argument that substantive, issue-oriented coverage could be increased if news organizations were more explicit with their bias. We already know that newspapers, for instance, have partisan leanings since they endorse candidates²⁷³

Or perhaps candidates should simply leverage the power of the digital age and use technology to bypass the news media altogether. The Internet is unfiltered—it lets people access information that is meaningful to them, leading to greater political involvement. In fact, research suggests direct candidate-voter communication increases voter interest and participation. Young people who seek out political information on their own tend to become more informed and interested.²⁷⁴

It is important to be humble in this effort and recognize the limitations of any efforts to improve the press. We should not forget that reporters are not really in the fact business; they're in the meaning business. Readers don't want to know the play-by-play; they want to know what it means. People do not care that Hillary Clinton deleted her email; they care because a talking head on TV implied her email activity is part of a nefarious plot to hide her role in killing the US Ambassador in Lybia.²⁷⁵ Journalism is

²⁷³ Iyengar, Shanto. *Media politics : a citizen's guide*. New York: W.W. Norton & Co. (2011): 329.

²⁷⁴ Iyengar, Shanto. *Media politics : a citizen's guide*. New York: W.W. Norton & Co. (2011): 330.

²⁷⁵ Brown, Ellen. "Exposing the Lybian Agenda: a Closer look at Hiillary's Emails". *Counterpunch Magazine*. March 14, 2016.

always going to be about meanings, judgments, interpretations, motives, intentions, reasons, explanations and logics.²⁷⁶

While the digital age provides us more access to information, it does not always provide us more access to wisdom. The internet has so much information about every possible topic; therefore, it actually stands for nothing, which is the opposite of politics. It also makes it easier for statements made in jest to be taken literally and has a tendency to give credence to the most extraordinary statements, rather than the most accurate. The bottom line is it makes it harder to filter information from noise.²⁷⁷

Lobbying Activity and the Unintended Consequences of Regulating Rights Guaranteed by the First Amendment

“The Bill of Rights explicitly protects four professions: Journalists (1st Amendment), Clergy (1st Amendment), Criminal Defense Attorneys (6th Amendment), and Lobbyists (1st Amendment.)”²⁷⁸ –Adam Nordstrom, lawyer and railroad lobbyist.

Lobbying: An Honorable Profession

There is a fundamental misunderstanding about lobbying among the American public. Even though it was only formally defined as an occupation in 1946, lobbying is probably one of the world’s oldest professions. Lee Drutman defines lobbying as, “...any activity oriented towards shaping public policy outcomes.”²⁷⁹ Lobbying was first

²⁷⁶ Ridout, Travis N. *New directions in media and politics*. New York: Routledge, Taylor & Francis Group, (2013): 210-220.

²⁷⁷ Ridout, Travis N. *New directions in media and politics*. New York: Routledge, Taylor & Francis Group, (2013): 218.

²⁷⁸ Nordstrom, Adam, Railroad Lobbyist and Lawyer. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. June 15, 2016

²⁷⁹ Drutman, Lee. *The business of America is lobbying : how corporations became politicized and politics became more corporate*. Oxford New York, NY: Oxford University Press. (2015): 15.

regulated under the Federal Regulation of Lobbying Act of 1946. It is unsurprising that subsequent attempts to amend the law, "...largely stalled in the face of persistent concerns about First Amendment encroachments."²⁸⁰ After all, the right to petition the government is explicitly guaranteed. The 1946 statute was repealed and replaced in the early days of the Gingrich Speakership. The system put in place under the 1995 Lobbying Disclosure Act (LDA) is largely still in place today. Under the LDA, "a 'lobbyist' who is required to register with Congress is defined as 'any individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than twenty percent of the time engaged in the services provided by such an individual to that client over a three-month period.'"²⁸¹

Lobbyists in Washington perform tasks essential to good governance. As Allard explains, "For the most part, public policy advocacy is necessary, difficult work performed by law-abiding, highly skilled professionals who help government arrive at better-informed, and hopefully better, decisions."²⁸² As Kingdon and Drutman make clear, lobbyists play an important role in influencing the legislative agenda.²⁸³

²⁸⁰ Allard, Nicholas, W. "Lobbying is an Honorable Profession: The Right to Petition and the Competition to be Right". *Stanford Law and Policy Review*. Vol. 19 (2008): 38.

²⁸¹ Allard, Nicholas, W. "Lobbying is an Honorable Profession: The Right to Petition and the Competition to be Right". *Stanford Law and Policy Review*. Vol. 19 (2008): 33-34.

²⁸² Allard, Nick, *Lobbying is an Honorable Profession: The Right to Petition and the Competition to be Right*. "Stanford Law and Policy Review." (2008): Page 66.

²⁸³ Drutman, Lee. *The business of America is lobbying : how corporations became politicized and politics became more corporate*. Oxford New York, NY: Oxford University Press. (2015): 220; Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 95-97.

Who Lobbies?

Organized interests in Washington represent a wide range of important aspects of the American economy and culture. Whatever one's special interest, there is most likely an organized lobby outfit supporting it. But not all interests are influential. Despite Madison's eloquent prediction in Federalist 10 that the combination of the nation's interest groups will result in policy that suits the need of the broader population, there is evidence to the contrary. Taken together, all of the mass-based interest groups and businesses active in politics do not represent the interests of the citizenry as a whole. In fact, business-oriented groups have a negative overall correlation with the policy preferences of most citizens.²⁸⁴ Madison was right about something else, though. His belief that 'the causes of faction' are 'sown in the nature of man,' removable only by 'destroying the liberty which is essential to its existence'"²⁸⁵ rings true in Washington today.

Even though the interests of business do not always line up with the interests of other Americans, there is still an intense competition among those involved in public policy advocacy to have their position carry the day. No amount of relationship-building, campaign contributions, or access can overcome being on the wrong side of an issue. In Washington there exists a self-correcting mechanism in the policy process: the contest to be right. No one has a monopoly over information and, "As Hubert

²⁸⁴ Gilens, Martin and Page, Benjamin. "Testing Theories of American Politics: Elites, Interest Groups and Average Citizens." *Perspectives on Politics*. American Political Science Association. Vol 12/No. 3. September 2014: 571.

²⁸⁵ Allard, Nicholas, W. "Lobbying is an Honorable Profession: The Right to Petition and the Competition to be Right". *Stanford Law and Policy Review*. Vol. 19 (2008): 37.

Humphrey said, ‘the right to be heard does not automatically include the right to be taken seriously.’”²⁸⁶

It stands to reason that as more people engage in lobbying activity, the influence of any single advocate is diminished. Therefore, today’s intense lobbying activity in Washington is a positive development. Before the 1970s, few corporations retained lobbyists and business trade associations engaged in nothing close to the scope and sophistication of modern lobbying.”²⁸⁷

Even though large-scale studies of the impact of money spent on lobbying activity fail to uncover any specific impact of money on outcomes. It is likely this is because the bias for the preferences of organized interests permeates the Capitol, from what makes it on the agenda to whom officials meet and ask for campaign money, and how those officials vote.²⁸⁸ Money does not buy outcomes, it buys access. Lobbyists’ strongest impact is on the agenda-setting stage of the process. They help officials determine which issue to work on and which can be ignored without consequence.²⁸⁹

The Myth of the Unified “Public Interest”

One of the most frustrating aspects of studying Congress and questions about its responsiveness to public opinion is the assumption that the “public” is some sort of

²⁸⁶ Allard, Nicholas, W. “Lobbying is an Honorable Profession: The Right to Petition and the Competition to be Right”. *Stanford Law and Policy Review*. Vol. 19 (2008): 32.

²⁸⁷ Drutman, Lee. *The business of America is lobbying : how corporations became politicized and politics became more corporate*. Oxford New York, NY: Oxford University Press. (2015): 218.

²⁸⁸ Baumgartner, Frank, et. al. “Money, Priorities, and Stalemate: How Lobbying Affects Public Policy”. *Election Law Journal*. Vol. 13, No 1. November 1, 2014: 194.

²⁸⁹ Baumgartner, Frank, et. al. “Money, Priorities, and Stalemate: How Lobbying Affects Public Policy”. *Election Law Journal*. Vol. 13, No 1. November 1, 2014: 201.

unified entity with a set of policy preferences. The simple truth is some people have more of an interest in some things than others.

Should “elites” who know the most about policy questions have disproportionate influence the debate? Although Gilens and Page believe, “organized citizens generally know their own values and interests pretty well, and that their expressed policy preferences are worthy of respect,”²⁹⁰ this is a much too charitable view of the average citizen. When it comes to questions of a scientific or technical nature, for example, it certainly seems like elites should have the loudest voice. Consider the Climate Change debate for example.

Extreme climate change skeptics are routinely lampooned for their ignorance, and are encouraged to stay out of the debate unless they are willing to agree to rational terms, like using an observable, falsifiable, repeatable scientific method to back claims. After all, why should a politician who admittedly knows nothing of climate science ignore the wisdom of the experts? The same is true of other policy questions, such as the specifics of government safety regulations or business practices regulations. Should the voice of the “average citizen” who knows little of highway safety be heard as loudly as the civil engineer? Should the average citizen who has never seen a railroad operation determine how frequently a locomotive must be inspected? Any rational person would have to agree not. Whether or not all *relevant* voices are considered should be the test for whether or not a policy decision is made justly—not whether or not everyone was heard.

²⁹⁰ Gilens, Martin and Page, Benjamin. “Testing Theories of American Politics: Elites, Interest Groups and Average Citizens.” *Perspectives on Politics*. American Political Science Association. Vol 12/No. 3. September 2014: 576.

The average citizen benefits from a rationale climate change policy, speed limits and industrial regulations, even if the average person either disagrees with or does not recognize the wisdom of elite input.

Although Madison is mistaken in his assumption that the end result of debate among elite factions would be policies consistent with public sentiment, it is not necessarily a bad thing that the preferences of elites are often chosen over the average person. Even though elites and business groups often successfully push for public policies contrary to the wishes of the average citizen, the hard truth is when it comes to many public policy questions, elites know better. They are called “elite” for a reason. However, the extent to which large portions of the public assume lobbyists are behaving illegally or immorally damages the Congress’ reputation. It also misdirects the public’s attention in terms of what actually drives opportunities for some actors to have a disproportionate influence over policy.

Lobbyists Influence is Significant, but Typically Overstated

Scholars have been unable to consistently find that interest group lobbying dollars translate into policy influence. In the most large-scale project to date, Baumgartner et al. (2009) followed hundreds of policy issues and compare resources dedicated to each side of each issue, only to find that aggregate resources do not

determine who wins.²⁹¹ In short, researchers have failed to find a direct relationship between money spent and policy outcomes for lack of trying.²⁹²

Despite lacking hard evidence of the particular influence of lobbying activity affecting specific official actions by members of Congress, journalists continue to operate under the assumption that politicians can be bought like a car.²⁹³ Indeed, “for the most part, journalists have either assumed or asserted (on the basis of highly flawed evidence) that interest group lobbying, whether direct or indirect, inside or outside, old-breed or new-breed, can have substantial influence on how members of Congress vote.”²⁹⁴ This trope continues to permeate journalists and their audience.

More likely, the lobbyists of well organized interests are most influential in terms of agenda setting. Their power lies in the extent to which they are able to establish a universe of acceptable policy issues. Leading interest groups have had the opportunity to contribute to agenda setting in informal and formal ways for decades. For instance, in the 104th Congress, then-Republican Conference Chairman John Boehner (R-OH) held weekly strategy sessions with the leaders of major interest groups. He did this both to learn from them what should be on the congressional agenda, and to call upon the lobbying teams of those interests to help him persuade his members to support his own

²⁹¹ Baumgartner, Frank R., Jeffrey M. Berry, Marie Hojnacki, David C. Kimball, and Beth L. Leech. *Lobbying and Policy Change: Who Wins, Who Loses, and Why*. Chicago: University of Chicago Press. (2009): 15.

²⁹² Drutman, Lee, et. Al. “The Interest Group Top Tier: More Groups, Concentrated Clout”. *Sunlight Foundation*. August 21, 2014: 1.

²⁹³ Smith, Richard A. “Interest Group Influence in the U. S. Congress.” *Legislative Studies Quarterly* 20, no. 1 (1995): 97.

²⁹⁴ Wittenberg, Ernest, and Elisabeth Wittenberg. *How to win in Washington : very practical advice about lobbying, the grassroots, and the media*. Cambridge, MA: Blackwell. (1994): 126.

agenda.²⁹⁵ Today, agenda setting by the well organized interests is even more expensive, technical and advanced, mirroring the global economy in general. Corporations and trade associations go beyond investing in lobbying; they fund think-tank white papers and draft op-eds; they hold panel discussions and other public events to shape the intellectual and policy environment. This allows them, "...to make sure certain frames and assumptions come to mind immediately and easily when policymakers consider legislation and rules." As Drutman puts it, modern lobbying efforts "come with footnotes."²⁹⁶

The influence of financial contributions from lobbyists is vastly overstated. There is significant evidence to suggest, "Individuals are the main source of money in U.S. campaigns, and their presence mutes the political leverage of interest groups...In a way, then, 20 million individuals in the United States protect themselves and their fellow citizens from special interest power with their donations of about \$100 dollars each."²⁹⁷ Perhaps if individuals quit contributing to campaigns, interest group money would be more pivotal for elections and policymaking. At the same time, when it comes to discrete policy questions that are of little interest to people outside of a particular field or business, the access afforded to interest groups via their campaign contributions can be significant. Campaign contributions and money to hire lobbyists buys access, not outcomes. Legislators and their staffers are busy people. Campaign contributions are

²⁹⁵ Harris, Douglas B. "The Rise of the Public Speakership." *Political Science Quarterly* 113, no. 2 (1998): 208.

²⁹⁶ Drutman, Lee. *The business of America is lobbying : how corporations became politicized and politics became more corporate*. Oxford New York, NY: Oxford University Press. (2015): 220.

²⁹⁷ Ansolabehere, Stephen, De Figueiredo John M., and Snyder James M. "Why Is There so Little Money in U.S. Politics?" *The Journal of Economic Perspectives* 17, no. 1 (2003): 127.

one way to improve the chances of getting to see the legislator about matters of concern to the group.”²⁹⁸

Just because we do not have explicit evidence for a direct connection between most lobbying activity and most outcomes does not mean a strong association does not exist. Politics is a fluid environment that is difficult to model. Objectively, “Social science research on political influence has found no relationship between political resources and likelihood of success. However, the lack of a direct, statistically significant correlation does not mean there is no influence. It just means that the influence is unpredictable...Policy does not go to the highest bidder. Politics is far messier, and far more interesting than such a simplistic model might suggest.”²⁹⁹

Lobbyists Subsidize the Legislative Process

“Of course lobbyists subsidize the policy process with their data and policy research. You have to assume that if you don’t, your opponent will.”³⁰⁰
--David Black, railroad lobbyist.

To the extent the Congress still moves legislation outside the shadow of a crisis, “Lobbyists more than subsidize the legislative process; they drive it.”³⁰¹ Lobbyists are experts in their field and by definition represent much more than their own self-interest. Their primary role is to be a trusted source of information, “...and it is axiomatic that legislators benefit when they can consider information from a broad range of interested

²⁹⁸ Ansolabehere, Stephen, De Figueiredo John M., and Snyder James M. "Why Is There so Little Money in U.S. Politics?" *The Journal of Economic Perspectives* 17, no. 1 (2003): 126.

²⁹⁹ Drutman, Lee. *The business of America is lobbying : how corporations became politicized and politics became more corporate*. Oxford New York, NY: Oxford University Press. (2015): 218.

³⁰⁰ Black, David, Railroad Lobbyist. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. June 17, 2016

³⁰¹ Natural Resource Issues Lobbyist. Spoke on condition of anonymity. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. June 17, 2016

parties...”³⁰² As outlined in the next section, the Congress in recent years has reduced its institutional capacity for policy development, even as the economy and population has grown tremendously. As a result, Congress relies on lobbyists for information. Consequently, in its interactions with professional and amateur lobbyists alike, it is not so much that Congress is, “venal and corrupt as it is incapacitated and obsolete,” unable to serve the needs of democracy in the 21st Century.³⁰³ It is no surprise that two-thirds of staffers recognize the need for lobbyists in Washington.³⁰⁴

Lobbying is Effective

In 2014, Gilens and Page published findings that go beyond the policy influence of a single organized interest. While their method is imperfect, they found, “...economic elites and organized interest groups representing business interests have substantial independent impacts on U.S. government policy, while average citizens and mass-based interest groups have little or no independent influence.”³⁰⁵ The truck weight policy example in Chapter 2 is an example of an organized group of business interests (the railroads) leveraging the support of average citizens (highway motorists) to achieve a desired outcome (maintaining current weight limits).

³⁰² Allard, Nick, *Lobbying is an Honorable Profession: The Right to Petition and the Competition to be Right*. “Stanford Law and Policy Review.” (2008): 43.

³⁰³ Kelly, Lorelei, *Congress’ Wicked Problem: Seeking Knowledge Inside the Information Tsumani*. New America Foundation. December 2012.

³⁰⁴ Allard, Nick, *Lobbying is an Honorable Profession: The Right to Petition and the Competition to be Right*. “Stanford Law and Policy Review.” (2008): 49.

³⁰⁵ Gilens, Martin and Page, Benjamin. “Testing Theories of American Politics: Elites, Interest Groups and Average Citizens.” *Perspectives on Politics*. American Political Science Association. Vol 12/No. 3. September 2014: 564.

To be sure, is a two-way street. The elected officials ask for money. A number of scholars have even made the argument that, "...campaign contributions from interest groups may not represent quid pro quo bribery attempts by groups, but instead result from extortion by politicians who threaten to harm the groups' interests."³⁰⁶ Still, politicians are apt to criticize lobbyists, as Senators Rockefeller and Boxer did in the railroad policy example in Chapter 1.³⁰⁷

Efforts to Regulate Lobbying Have Aided Well Organized Interest Groups and Marginalized Minor Players

"The anti-lobbyist mentality is a result of political and media consultants profiting off of anti-establishment backlash. The truth is everyone has a special interest."³⁰⁸ –Natural Resource Issues Lobbyist and former White House and Congressional Staffer

In 2007, the Congress passed the Honest Leadership and Open Government Act of 2007 (HLOGA; PL 110-81; see Figure 6 below), amending portions of the Lobbying Disclosure Act of 1995. Upon passage, Speaker Nancy Pelosi (D-CA) released the following statement:

The bill...ends the tight-knit relationship between lobbyists and lawmakers. We told the American people that Democrats would 'drain the swamp' and change the way business is done in Washington...we restored accountability by imposing the toughest ethics standards ever: no gifts, no private jets, and no meals from lobbyists....The Honest Leadership, Open Government Act of 2007 and the Congressional ethics reforms enacted in the first 100 hours of this

³⁰⁶ Gilens, Martin and Page, Benjamin. "Testing Theories of American Politics: Elites, Interest Groups and Average Citizens." *Perspectives on Politics*. American Political Science Association. Vol 12/No. 3. September 2014: 568.

³⁰⁷ Rockefeller, John. U.S. Congress. Senate Commerce, Science, and Transportation Committee Hearing, *The Federal Role in National Rail Policy*. 11th Congress, 2nd sess. September 15, 2010; Boxer, Barbara, speaking on "Positive Train Control". 114th Congress, 1st sess. *Congressional Record-Senate*. (October 28, 2015): S7577.

³⁰⁸ Natural Resource Issues Lobbyist. Spoke on Condition of Anonymity. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. June 17, 2016

Congress are significant steps forward in cleaning up the culture of corruption that has plagued Washington, D.C. On the first day of this new Congress, the House passed rules to ban gifts and travel from lobbyists to Members of Congress, and end the abuses connected to privately-funded congressional travel.³⁰⁹

Figure 6: Relevant Provisions of Honest Leadership and Open Government Act³¹⁰

Section	Provision	Summary
Title 1	Closing Revolving Door and Ending “K Street Project”	Increases “cooling off period” before senior officials and staff can lobby Congress. Prohibits officials from influencing employment decisions solely on the basis of partisan affiliation.
Title II	Full Public Disclosure of Lobbying	Increases frequency of lobbyist disclosure reports from semi-annual to quarterly. Requires lobbyists to certify they have not given gifts or travel in violation of rules. Sets disclosure trigger for reporting lobbying at \$5,000 annually.
Title III	House Rule Changes	Prohibits House members from negotiating future lobbying contracts while in office and mandates disclosure of any similar negotiations by senior staff.
Title V	Earmark Reform and Gift Ban	Requires Appropriations Committee to list members who requested specific directed spending provisions. Prohibits Members and staff from accepting gifts from lobbyists.

Contrary to the rhetoric, “Greater regulation [of lobbying] has actually coincided with a sharp increase in professional lobbying, alongside an increase in related work by professionals with government-relations expertise representing clients facing oversight

³⁰⁹ Pelosi, Nancy. Statement on Judiciary Committee Passage of Strong Lobbying Reform Bill. May 17, 2007. Source: <http://www.democraticleader.gov/newsroom/pelosi-statement-judiciary-committee-passage-strong-lobbying-reform-bill/>

³¹⁰ Source: GPO Printing of PL 110-81 retrieved from Library of Congress Thomas online legislative database.

and public investigations.”³¹¹ Part of this is simply because success begets interest in lobbying. “...corporate lobbying is self-reinforcing: once companies establish government relations departments, those departments find ways to justify their continued and often expanding existence, and corporate managers come to see politics as important, finding more and more reasons to stay involved and taking advantage of the decreased marginal costs of political activity once initial start-up costs are paid.”³¹²

Moreover, as companies become more experienced and comfortable navigating the legislative and regulatory process, they increasingly become adept at working for their own narrow interest. Drutman describes this phenomenon succinctly: “As corporate lobbying investments have expanded, they have become more particularistic and more proactive. They have also become more pervasive, driven by the growing competitiveness of the process to become more aggressive.”³¹³ The ultimate effect of the Honest Leadership and Open Government Act was to concentrate the power of the largest companies and limit the influence of smaller players. The smaller and less well financed interests that still wanted to be “in the kitchen” in Washington felt compelled to establish PACs in order to obtain access,” since they could no longer rely on paying for informal lunches or other ways of accessing decision-makers.³¹⁴

³¹¹ Allard, Nicholas, W. “Lobbying is an Honorable Profession: The Right to Petition and the Competition to be Right”. *Stanford Law and Policy Review*. Vol. 19 (2008): 24.

³¹² Drutman, Lee, et. Al. “The Interest Group Top Tier: More Groups, Concentrated Clout”. *Sunlight Foundation*. August 21, 2014. Page 8.

³¹³ Drutman, Lee. *The business of America is lobbying : how corporations became politicized and politics became more corporate*. Oxford New York, NY: Oxford University Press. (2015): 219.

³¹⁴ Natural Resource Issues Lobbyist. Spoke on condition of anonymity. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. June 17, 2016

For example, in 2003 if a lobbyist wanted to have lunch with a member of Congress, he could spend \$100 for a meal at a fine downtown restaurant and have an hour to present his views to the member. Today, that activity would be illegal. In the words of Speaker Pelosi buying food cannot be allowed because the Congress voted to, “...break the link between lobbyists and legislators.”³¹⁵

In 2003, the lobbyist could spend an hour with the elected official who will be making decisions that greatly affect the success or failure of his business. During the meal, he could share his company’s viewpoint and hope to influence the member’s decision. The next day, the Congressman will probably want to eat lunch again. This day, he dines with a lobbyist from a competing firm with a different opinion on the proposed legislation. That lobbyist hopes to influence the Congressman. On Thursday, the Congressman votes in favor of the second company. The lobbyist then hosts a reception in his honor during the company’s next Board of Directors meeting. All of that free food is now outlawed.

Today, it would play out like this. Lobbyists cannot buy a \$50 meal for a Congressman; however, it is perfectly legal and often that lobbyists will have lunch with members of Congress. The only difference is now they must bring a check for \$500 to \$5,000 made out to the member’s campaign or leadership committee with them. As previously discussed, “Campaign contributions may not ‘buy’ votes in any crude sense; a good deal of evidence suggests that they do not. But the need for them is bound to

³¹⁵ Pelosi, Nancy. Statement on House Passage of Lobbying Reform Bill. May 24, 2007.

color deeply a congressman's or senator's image of his entire political environment."³¹⁶ Certainly a large check to a Congressman's campaign, in an era of political upsets and regular primary challenges, must be more influential than a single meal.

If there is a problem with the way lobbying is conducted in Washington today, it is that one set of interests routinely overpowers the rest. It is much harder for a small interest to muster the resources to establish and fund a Political Action Committee, or for a lobbyist they hire to write personal checks. Efforts to regulate lobbying—an activity clearly protected by the First Amendment—have reinforced this state of play. This is not to suggest there is a way or reason to prevent powerful groups from exercising their power. As one former staffer put it, "There are always going to be economies of scale, whether you're Walmart in the economy or Walmart in politics."³¹⁷

Another unintended consequence of today's regime of lobbying regulation is that it, "reinforce[s] the view that politicians and lobbyists are corrupt, and unless you micromanage every aspect of their behavior they will do the wrong thing."³¹⁸ HLOGA reinforces this misguided public perception of who lobbyists are and what they do. As one House Democratic staffer stated, "There is a public perception that all lobbyists are corrupt. People don't realize that most lobbyists interest that are important for everyday

³¹⁶ King, Anthony. "The Vulnerable American Politician". *British Journal of Political Science* 27 (1). Cambridge University Press. (1997): 7.

³¹⁷ Former House Democratic Communications Staffer. Spoke on condition of anonymity. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. June 19, 2016

³¹⁸ Allard, Nick, "Lobbying is an Honorable Profession: The Right to Petition and the Competition to be Right". *Stanford Law and Policy Review*. (2008): 59.

life.”³¹⁹ A former Republican staffer expressed the same sentiment, arguing, “HOLGA gives lobbyists a bad name. There is an undeserved, negative mystique surrounding the profession. It’s incredible that President Obama banned the most knowledgeable people in town from working for his Administration.”³²⁰ The same staffer observed that the title “lobbyist” is largely meaningless anyway, since, “Thousands of people lobby every year without considering themselves lobbyists...plenty of people come here to lobby without ever triggering registration requirements.”³²¹

The problem with these public perceptions is that the Congress has made efforts over the years to be responsive to them as if they were accurate. Often, Congressmen have actually inflamed these misguided passions. As Allard points out, “The public is extremely suspicious of lobbyists; approximately eighty percent of Americans believe that lobbyists exercise undue influence on public policy.”³²² Perhaps the conduct of some lobbyists has convinced the public that most lobbyists are corrupt.³²³ If that is the case, it will be extremely difficult to disabuse the public of this flawed understanding.

³¹⁹ Current House Democratic Member Personal Staffer. Spoke on condition of anonymity. Washington, DC. June 17, 2016.

³²⁰ Former G.W. Bush White House and House Republican Staffer and Currently Registered Lobbyist. Interview with Harrison Wadsworth. Personal Interview. Spoke on condition of anonymity. Washington, DC. June 15, 2016.

³²¹ Former G.W. Bush White House and House Republican Staffer and Currently Registered Lobbyist. Interview with Harrison Wadsworth. Personal Interview. Spoke on condition of anonymity. Washington, DC. June 15, 2016.

³²² Allard, Nicholas, W. “Lobbying is an Honorable Profession: The Right to Petition and the Competition to be Right”. *Stanford Law and Policy Review*. Vol. 19 (2008): 25.

³²³ Allard, Nicholas, W. “Lobbying is an Honorable Profession: The Right to Petition and the Competition to be Right”. *Stanford Law and Policy Review*. Vol. 19 (2008): 29.

President Obama's Prohibition Against Lobbyists Serving in his Administration was a Tremendous Mistake

"You are a statesman when you do what you think is best even when your constituents think otherwise, and they later come to agree with you."

—Former Senate Majority Leader Trent Lott³²⁴

Despite the imperfect system that exists for regulating lobbying activity, one thing that is a simple fact of life in this system is that the lobbyists themselves are some of the most politically skilled people in the nation. For this reason, President Obama's Executive Order 13490 of January 21, 2009—his first day in office—prohibiting registered lobbyists from working in his administration was a tactical error with longstanding consequences. The action may have sent a politically expedient signal to the nation, but its practical impact was that many of the people who had registered as lobbyists over the past several years, "... (including some who had done so just to be careful, even though they probably didn't have to) were disqualified from administrative positions they had hoped to obtain."³²⁵

The effect was to prevent thousands of people with advanced policy expertise from serving their nation in administrative positions. Many of these people were former House and Senate staffers that could have leveraged personal and professional relationships to advance the President's agenda, as was the practice under previous administrations.³²⁶ Former Senate Majority Leader Trent Lott (R-MS) points out that his former colleague and current business partner, Former Senator John Breaux (D-LA) was

³²⁴ Lott, Trent. Former U.S. Senate Majority Leader. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. July 11, 2016.

³²⁵ Drutman, Lee. *The business of America is lobbying : how corporations became politicized and politics became more corporate*. Oxford New York, NY: Oxford University Press. (2015): 226.

³²⁶ Allard, Nicholas, W. "Lobbying is an Honorable Profession: The Right to Petition and the Competition to be Right". *Stanford Law and Policy Review*. Vol. 19 (2008): 43-45.

probably more qualified than anyone else in the nation to provide advice to the Obama Administration as it developed its healthcare proposals in 2009, given his decades of public service in healthcare policy as a member of the House and Senate. In fact, Obama invited him to the White House for a healthcare summit in 2009, but later revoked the invitation after learning he had registered as a lobbyist after leaving the Senate.³²⁷

The Executive Order also had the unintended result of discouraging many political and government professionals from engaging in activities that would trigger a lobbying registration. Perhaps Senator Breaux would have avoided activities that trigger registration if he knew he would be shut out of future policymaking processes. Suddenly, after the Executive Order, a new class of “consultants” and “strategic advisors” emerged: people who advised lobbyists without actually having any contact with officials covered under the lobbying laws.³²⁸

As one former White House staffer turned lobbyist put it:

That Executive Order was the biggest systematic mistake President Obama could have made. It means anyone who can get things done isn't working for him. The only way to learn the legislative and regulatory process is to do it; no bill passes the same way twice. The result is the only real practitioners in the Administration are the ones of high enough personal wealth and status that they never have had to register to lobby, and are able to take a pay cut to work in the Administration. It also discourages people from following the lobbying rules.³²⁹

³²⁷ Lott, Trent. Former U.S. Senate Majority Leader. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. July 11, 2016.

³²⁸ Drutman, Lee. *The business of America is lobbying : how corporations became politicized and politics became more corporate*. Oxford New York, NY: Oxford University Press. (2015): 227.

³²⁹ Natural Resource Issues Lobbyist. Spoke on condition of anonymity. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. June 17, 2016

The Corruption Discussion is a Distraction

“It’s offensive to imply a nice meal is going to sway a person’s thinking or belief. You’re not going to get money out of the system; you’ll just redirect it. The access points have changed: PAC checks instead of steaks and bar tabs.”

—Former House Republican Chief of Staff³³⁰

Simple corruption is not a problem in Washington. However, it is a problem that the common wisdom of how Washington operates comes with an assumption that “special interests” and their lobbyists “buy” politicians, sort of like you’d buy a candy bar or a bag of chips out of a (very high-dollar) vending machine.³³¹ Former Senator Lott bluntly describes this view as, “Purely offensive. I voted against HLOGA for a number of reasons, but mainly because it implies that I or any other Senator could be bought off by a meal.”³³²

The problem with this view is not only that it is wrong, but also that it misdirects the discussion. In short, it asks us to analyze politics without the actual *politics*—without the competition between competing interests, without the shifting alliances and coalitions, without parties and ideology, without any sense of there being a policy *process*, and without the many unpredictabilities and uncertainties that actually make politics interesting. It asks us to analyze transactions between individual politicians and individual special interests, as if they were separate and independent

³³⁰ Former House Republican Chief of Staff. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. July 8, 2016

³³¹ Drutman, Lee. *The business of America is lobbying : how corporations became politicized and politics became more corporate*. Oxford New York, NY: Oxford University Press. (2015): 227.

³³² Lott, Trent. Former U.S. Senate Majority Leader. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. July 11, 2016.

events (they are neither) that can be described as either “corrupt” or “not corrupt” (a useless dichotomy).

In so doing, we miss the bigger and more important story. The real story is not that lobbying or special interests are inherently bad. We have had them as long as we’ve had politics. And in assuming corruption is the problem, the solutions offered to fix it do not correspond with the purported goals of bringing more people to the table. Bringing more people to the table would be better accomplished by addressing issues of information asymmetry, the balance of power among competing interests, and the excessive particularism of well established interest groups.³³³

If getting a preferred legislative outcome were as simple as writing a campaign check or in past years buying steaks and martinis, everyone would do it. The reason to hire so many lobbyists is that genuine political influence is actually hard work. It requires building a compelling case and then making that case over and over and over again. It means being in multiple places at once. Most of the time in Washington, not much is happening at the measurable surface, so having someone monitor the state of play and build relationships over the long-run is critical.

Suggestions for Correcting the Record and Widening the Lobbying Tent

Public concerns about the influence of lobbying can best be addressed with more lobbying, not less. When more individuals and interests are active in Washington, the

³³³ Drutman, Lee. *The business of America is lobbying : how corporations became politicized and politics became more corporate*. Oxford New York, NY: Oxford University Press. (2015): 228.

influence of each interest is dispersed. This is what Madison was after—more factions lead to more representation. The problem with the so-called reforms of HLOGA is that they create barriers to entry into lobbying activity.

Baumgartner et. al.—who concluded that organized interests’ most powerful impact is agenda setting—found, “...the only reforms that are likely to have very powerful effects would be those that change the distribution of who is at the table, or reduce the degree of distortion that is currently in the system.” Distortion refers to the complete lack of voice for those who are not politically engaged and the extreme amplification of the voices of organized groups.³³⁴ Under our Constitution, Baumgartner is probably best pursuing his first suggestion: changing who is at the table. The best way to accomplish that is not by limiting who gets access by further regulating lobbying activity (i.e. the First Amendment). Instead, the focus should be on getting a larger table with more chairs. As the adage goes, if you’re at the table or in the kitchen, you’re probably not on the menu.

Naiveté and a simplistic outlook will not help address this challenge. Although the American Constitutional system aims to represent the People, frankly there is not now, nor will there ever be perfect representation of any group or interest in America. It will always be as Churchill once said, “No one pretends that democracy is perfect or all-

³³⁴ Baumgartner, Frank, et. al. “Money, Priorities, and Stalemate: How Lobbying Affects Public Policy”. *Election Law Journal*. Vol. 13, No 1. November 1, 2014: 208.

wise. Indeed it has been said that democracy is the worst form of government except for all those other forms that have been tried from time to time.”³³⁵

Declining Frequencies of Interaction Among Members of Congress Hurts the Legislative Process

A reduction of professional and social interaction by members of Congress today—and a resulting decline in camaraderie among them—might contribute to the low levels of collaboration among members of different political parties. Hard research on this subject is limited, but the remarks of current and former members of Congress make it worthy of mention.

As touched on in the above discussion of the CSPAN effect, in today’s Congress there are fewer opportunities than ever before for members to interact and collaborate with one another. From the growth of the now nearly universal “Tuesday-to-Thursday Club,”³³⁶ to the difficulty of leading several hundred ambitious politicians with little personal interaction,³³⁷ there is reason to believe that limited interaction among members of Congress might have an impact on the outputs of the institution.

Recently, former Senate Majority Leaders Tom Daschle (D-SD) and Trent Lott (R-MS) have raised this issue in a book they co-authored. Combined, they have nearly sixty years of experience in the Congress and according to their experience, they “...know that communication within and between the parties—and the relationships that result—

³³⁵ Churchill, Winston, and Richard M. Langworth. *Churchill by himself: the definitive collection of quotations*. New York: Public Affairs, 2008.

³³⁶ Fiorina, Morris P. “Congress: Keystone of the Washington Establishment, 2nd Ed.” *Yale University Press*. New Haven, Ct. (1989): 91-92.

³³⁷ Harris, Douglas B. “The Rise of the Public Speakership.” *Political Science Quarterly* 113, no. 2 (1998): 208.

creates chemistry, an absolute necessity to the functioning of good government.” They add that, “chemistry, compromise, leadership, courage and vision” are lacking in today’s Congress. The two leaders—who led their parties in the Senate when the partisan division of the body was 50-50 in 2001—observe that the institution has, “reached a point of gridlock that’s got us at a crisis point.”³³⁸

As leaders of their respective Senate caucuses, the two kept a constant line of direct communication (literally a phone line), to bypass the scandal-obsessed media and partisan bean counters on their staffs.³³⁹ They write that, “the ubiquity of planes and telecommunication has made it feasible to work in Washington without living there (in fact, being a Washington resident is used *against* candidates.) True to its name, the media has become a comfortable filter through which both sides can hurl partisan assaults without having to face each other. Meanwhile, primaries have begun to reward the extremes, stripping away moderates on both sides of the aisle and turning off voters in the process...”³⁴⁰

Lott observed that when he served in the House, he lived with his family in Annandale, VA, a suburb of Washington, DC. Six other members of Congress lived in his neighborhood and all of their children “...played kick the can and baseball together and our spouses socialized. You can’t exactly go up to the microphone on the floor and

³³⁸ Lott, Trent. Interview on “The Dianne Rehm Show: Former Senators Trent Lott and Tom Daschle: Crisis Point”. National Public Radio. January 19, 2016.

³³⁹ Lott, Trent. Interview on “The Dianne Rehm Show: Former Senators Trent Lott and Tom Daschle: Crisis Point”. National Public Radio. January 19, 2016.

³⁴⁰ Lott, Trent, Daschle, Tom and Sternfeld, Jon. *Crisis Point: Why We Must – and How We Can – Overcome Our Broken Politics in Washington and Across America*. New York, NY: Bloomsbury Press. (2016): 3.

destroy the character of your neighbor and father of kid's little league teammate." As Majority Leader, he made a point of scheduling votes on Monday at noon and Friday at noon, so that members would have to be in Washington working, rather than dashing off to the airport on Thursday morning and only returning to vote on Tuesday evening. He recently advised a group of current House members to move their families to Washington and for Speaker Ryan to schedule votes as he did, telling them, "The job really is not worth it if you spend every moment trying to leave it. Have a little courage and be here, taking the tough votes. If you lose your election, you can go do something else having at least made an effort here." He admits it is unlikely they will take his advice.³⁴¹

While their experience likely informs a valuable opinion, it is extremely difficult to determine the degree to which social interaction contributes to political functionality. Fortunately, there is one recent example of an effort to leverage personal interaction among politicians and the resulting relationships that inevitably form to promote a constructive dialog that yields tangible results. In preparation for developing a passable surface transportation reauthorization, House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) established a "Panel on 21st Century Freight Transportation." Committee members from both parties were included on the panel, which conducted field visits of freight-related facilities throughout the country. Shuster hoped that visiting actual facilities that would benefit from transportation legislation —

³⁴¹ Lott, Trent. Former U.S. Senate Majority Leader. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. July 11, 2016.

while spending time traveling and touring with colleagues—would encourage collaboration on his future bill. Whether or not the panel directly contributed to Shuster’s success in getting what became the FAST Act passed is difficult to prove. As one former staffer bluntly put it, “Congressmen always being at home means they’re not legislating.”³⁴² Perhaps getting on the road together, conversing over long bus and train rides, researching the transportation needs of America opened new avenues for political collaboration that contributed to legislative success.

Personal Interactions Strengthen Relationships and Establish Necessary Levels of Trust

As the Lott-Daschle phone line demonstrates, there is value in being able to keep private negotiations private should not be underestimated. “Staying private” may be a more effective strategy for actually achieving policy objectives. For example, although there was some public debate, the big items in the Gingrich/Clinton budget agreement of 1997 were worked out privately between the two sides. Staying private eliminates opportunities to antagonize the other side and paint oneself into a corner with rhetoric.³⁴³

Consider Reagan Communications Director Pat Buchanan’s *Washington Post* op-ed in which he declared that a vote on intervention on behalf of the Nicaraguan contras

³⁴² Former G.W. Bush White House and House Republican Staffer and Currently Registered Lobbyist. Interview with Harrison Wadsworth. Personal Interview. Spoke on condition of anonymity. Washington, DC. June 15, 2016.

³⁴³ Edwards, George C. *On deaf Ears : the limits of the bully pulpit*. New Haven: Yale University Press. (2003): 254.

was a test of whether the Democrats stood for freedom or communism.³⁴⁴ Or more recently when President Bush famously declared in a joint session to Congress in September 2001 that, “either you are with us, or you are with the terrorists” (Bush Archive). Reagan lost the vote and although Bush won support for his authorization of force in Afghanistan, the line is remembered as producing to the first fissures of public sentiment in a nation united after the 9/11 attacks.

However, more political outcomes since then call into question the theory that staying private is a significantly more effective strategy. For instance, in the summer of 2011, President Obama and House Speaker John Boehner reportedly had identified a “grand bargain” to sort out ongoing disagreements between the parties over federal discretionary spending and entitlement reforms. However, according to the Democrat’s version of events, “while the president stood resolute against pressure from his own party, Boehner crumpled when challenged by the more radical members in his caucus.” And according to the Republicans’ version of events, “Obama, reacting to pressure from Democrats in Congress, panicked at the last minute and suddenly demanded that Republicans accede to hundreds of billions of dollars in additional tax revenue. A frustrated Boehner no longer believed he could trust the president’s word, and he walked away.”³⁴⁵

³⁴⁴ Edwards, George C. *On deaf Ears : the limits of the bully pulpit*. New Haven: Yale University Press. (2003): 168.

³⁴⁵ Bai, Matt. “Obama vs. Boehmer: Who Killed the Debt Deal?” New York Times. March 28, 2012.

More likely, both caucuses more or less immediately rejected the deal, largely on the grounds that they did not have input. After all, people do not enter public office to be told what to do on major issues. And in the Congress, they typically will not agree to anything unless they at least have an opportunity to insert a particular personal priority into any final deal. Furthermore, in a political system in which House districts are gerrymandered to the point that there is little overlap between the prevailing political disposition of the voting public in the vast majority of Republican and Democrat districts, opportunities for compromise are practically non-existent, no matter if the deal is accomplished through a public campaign or private negotiation.

Drutman identifies the fallacy of assuming transparency is the ultimate solution for problems in Washington. He responded to an interview question about the role of transparency the conclusion that, "People assume if a deal is cut transparently, in public, the deal will be cut in the 'public interest.' But politics is actually about the reconciliation of divergent interests. There is this expectation that when you open up the political process, the 'people' will be represented... [ignoring the fact that] an issue wouldn't be up for public debate in the first place if everyone was already in agreement."³⁴⁶ In other words, if there is going to be a deal, some people will lose.

Recently, private negotiations resulted in a significant political agreement: the multi-lateral Iran nuclear deal. Israeli efforts to scuttle the deal by making elements of the alleged discussions public indicates their belief in the power of "going public" to

³⁴⁶ Drutman, Dr. Lee. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. June 16, 2016.

make political compromise more difficult. Indeed, “the more the president can avoid the political echo chamber associated with partisan battles, the better the chance the president has to lead public opinion.”³⁴⁷

Who Should Lead Institutional Change?

“The biggest reason the gas tax is not on the agenda is a lack of Presidential leadership: Obama took it off the table. If he won’t lead, how can you expect Congress to walk that plank?” —Former G.W. Bush White House Staffer, House Republican Staffer, and Current Transportation Lobbyist³⁴⁸

This chapter identifies a number of potential changes that could strengthen the Congress. The second chapter outlines the many obstacles that stand in the way of Congressional activity and the first describes what it takes for legislators or other leaders to become policy entrepreneurs that actually utilize personal political capital to enact a preferred policy solution in legislation. But who is best positioned to make changes to the institution that would allow it to be responsive to the desires of the public while also making good policy?

The President

Presidents have the unique ability to appeal directly to the American public for support of a policy agenda. In fact, such appeals have been increasing for decades. This allows the President to choose whether to achieve goals through private bargaining and

³⁴⁷ Ridout, Travis N. *New directions in media and politics*. New York: Routledge, Taylor & Francis Group, (2013): 168.

³⁴⁸ Former G.W. Bush White House and House Republican Staffer and Currently Registered Lobbyist. Interview with Harrison Wadsworth. Personal Interview. Spoke on condition of anonymity. Washington, DC. June 15, 2016.

negotiation with Congress and other stakeholders, or through a public appeal.³⁴⁹

Although Presidents enjoy extensive latitude in shaping public perception of foreign affairs and other issues that the average person does not personally experience, they are more constrained when it comes to policy issues that people can personally experience, such as economic and tax policy. However, it appears facts matter little in either case, as oftentimes a President must choose between good policy and misinformed public opinion. As a result, Presidents face great political risks when they push unpopular policies related to issues that much of the public has firsthand knowledge of, and relatively little risk when they push flawed policies that conform to misinformed public opinion. Making decisions based on public opinion constrains a President's ability to exercise informed leadership and often the end result is bad policy.³⁵⁰

Therefore, it probably makes the most sense for the President to lead on these issues from a broad, agenda-setting perspective. It would likely be unhelpful for the President to directly engage on the particulars of any of these problems—the debacle of the Executive Order on lobbyists in the Obama administration is an obvious example. But on the big time issues, like whether or not to raise highway fuel taxes, the agenda is probably best set by the President, by virtue of his status as the only representative of the entire nation and his ability to garner media attention on a daily basis.³⁵¹

³⁴⁹ Kernell, Samuel. *Going public : new strategies of presidential leadership*. Washington, D.C: CQ Press. (2007): 222-233.

³⁵⁰ Iyengar, Shanto. *Media politics : a citizen's guide*. New York: W.W. Norton & Co. (2011): 329.

³⁵¹ Former G.W. Bush White House and House Republican Staffer and Currently Registered Lobbyist. Interview with Harrison Wadsworth. Personal Interview. Spoke on condition of anonymity. Washington, DC. June 15, 2016.

The Speaker of the House?

Doug Harris charted the rise of the “Public Speakership” in the 104th Congress, nearly twenty years ago. At that time, the growth of the 24/7 news cycle, CSPAN and more news coverage generally, compelled Congressional leaders to take to the airwaves to promote their agenda.³⁵² Since then, the Speaker and members of his/her leadership team have continued to be the chief spokespersons for the House majority party.

Committee Chairs are weaker than ever, with House and Senate leadership deciding when bills are “ripe” enough to be reported out of Committee. Excessive control by party leadership is an impediment to efforts to make the Congress more nimble and responsive. As one current House Democratic Staffer said it in response to a question about the failure to address the gas tax, “The Ways and Means Chairmen need to revive the power of their Committee; leadership is far too risk-averse to actually lead on important aspects of tax policy, including the gas tax. If the Speaker trusts a member enough to appoint him/her to a Committee Chairmanship, they should be willing to trust them to exercise judgment on policy in their jurisdiction.”³⁵³

The Speaker is also the party’s chief fundraisers and plays a leading role in the recruitment of new candidates. In an era of declining procedural and social norms in the House of Representatives, “...the most widespread individual norms appear to be based

³⁵² Harris, Douglas B. “The Rise of the Public Speakership.” *Political Science Quarterly* 113, no. 2 (1998): 198-200.

³⁵³ Current House Democratic Member Personal Staffer. Spoke on condition of anonymity. Washington, DC. June 17, 2016.

on party loyalty and success.”³⁵⁴ Under those terms, loyalty to the Speaker is essential for members to rise to leadership positions. If the downside of the preeminence of the Speakership is an overly cautious approach to bringing bills to the floor and a constant weighing of the electoral implications of votes, the upside is that the Speaker today is the only member with a full vision of the House. Recent scholarship by Matthew Green, building on the work of Mann and Orenstein, outlines that while polarization and a shift in norms and expectations to enforce group behavior are significant contributors to policy gridlock, any true reform to the practices of the institution must occur by virtue of, “...new initiative from within Congress to alter existing rules and practices...such an initiative could originate with party leaders...[who] have some leeway to influence the legislative process, establish and enforce norms of conduct, and temper (if not prevent entirely) the use of procedures to win narrow partisan battles.”³⁵⁵ The Speaker is theoretically the only member that the other members all interact with at least somewhat regularly. Therefore, any changes are unlikely without leadership from the Speaker.

The Private Sector?

The private sector remains a critical part of governance, as intended under the First Amendment. In the transportation field examined above, leaders are thought of as the people that build infrastructure, design new vehicles or develop clever policy.

Today, however, in an era of underfunded infrastructure, the attention has rightfully

³⁵⁴ Green, Matthew, and Burns Daniel. "What Might Bring Regular Order Back to the House?" *PS: Political Science and Politics* 43, no. 2 (2010): 224.

³⁵⁵ Green, Matthew, and Burns Daniel. "What Might Bring Regular Order Back to the House?" *PS: Political Science and Politics* 43, no. 2 (2010): 224-225.

shifted to those who can do more with less and speak honestly and openly about challenges. Here in Washington, DC, the WMATA Metro subway system is in a state of disrepair that has killed passengers and led to unprecedented travel disruptions. The silver lining to all of this turmoil is that the agency's new leader appears to be creating "focusing events" for the transit system and leveraging them accordingly.

Shortly after joining WMATA as General Manager, Paul Wiedefeld announced an immediate 29-hour shutdown of the system to conduct safety inspections.³⁵⁶ While previous leaders apparently allowed safety and maintenance lapses to fester, Wiedefeld leveraged the discovery of deteriorated electrical cables as an opportunity to draw attention to the need for culture change and financial investment. Whether the abrupt shutdown of the system for a day was in response to a discrete safety crisis, or an attempt to create a public crisis (focusing event) is immaterial at this point. It worked. Wiedefeld took a page from Kingdon's book. As Elizabeth Samet writes, "Leaders are responsible, restrained, attentive, focused, concerned, frightened of the consequences, and tempered by real world experiences that have left them compassionate and self aware. These qualities make it possible to be creative, ambitious, and daring when there really is a crisis."³⁵⁷ Weidefeld certainly took a daring risk in announcing a system shutdown. As Kingdon would have predicted, Congress took notice.

At a House Oversight Committee hearing shortly after the shutdown, Wiedefeld stated, "the safety culture at Metro is neither integrated with operations, nor well-rooted

³⁵⁶ Jansen, Bart. "Washington, D.C. subway to close for 29 hours of inspection". *USA Today*. March 16, 2016.

³⁵⁷ Puentes, Robert. "Leading the Transportation Transformation". *Eno Transportation Weekly*. June 6, 2016.

at all levels.” He said there would have to be prolonged shutdowns of entire segments of the system in order to bring it to a state of good repair. He also said there would need to be major management changes. In response to a suggestion by a Committee member, he agreed that the WMATA Board of Directors needs to be made up of transportation and financial professionals, rather than politicians. It is difficult to imagine a politician or politically appointed Board member relating such a strident indictment of the system. Committee members from both parties commended his frank talk and encouraged him to continue speaking the truth.³⁵⁸ There is renewed attention on the need to invest in public transit systems—the House Transportation Committee held its own hearing on transit safety shortly after the Oversight hearing. Weidefeld’s 29-hour shutdown of the Metro system for repairs was a focusing event demonstrating the role for non-government actors to play in reforming public institutions.

Conclusions

Congress tends to set its agenda based on the temporary passions aroused in after focusing events. It often prioritizes solutions according to political expediency rather than policy merits. Members of Congress avoid taking positions on thorny political issues like the gas tax to the extent possible. This means that the Congress rarely takes action, and when it does, it is often in the form of clumsy, hastily considered legislation, such as the Positive Train Control mandate. This appears to be a feature of

³⁵⁸ House Oversight and Government Reform Committee. Hearing Examining the Safety and Service of D.C. Metro. April 13, 2016.

the contemporary American political system. This chapter identifies factors that should be considered in any effort to lessen this negative feedback loop.

Clearly, the contemporary procedure for reapportioning House of Representatives district boundaries (i.e. gerrymandering) promotes political polarization that makes it difficult for the Congress to address policy issues in an orderly manner. It places members in a defensive posture from the first day in office.³⁵⁹ When a member is more concerned about the primary election than the general, there is little overlap in the political persuasions of voters represented by members of opposing parties.

It is unreasonable to expect the Congress to have seasoned, expert staff on hand to develop policy when it refuses to allocate monies to pay for them. Boosting staff pay, opening new positions for policy experts and amending the federal rulemaking process to give the Congress a greater voice in the implementation of laws are worth consideration.

The Congress also needs to quit contributing to the “outrage” business model of many of today’s media companies. The modern media climate rewards “show horse” politicians for playing to the extremes in policy debates and is largely indifferent to “workhorse” politicians take political risks to collaborate with colleagues and enact wise policy.³⁶⁰ Shutting down CSPAN so that members are comfortable actually debating issues is likely untenable, but that does not mean individual members have to use it as a forum to attack the character and motivations of members of the opposition. Facts are

³⁵⁹ King, Anthony. “The Vulnerable American Politician”. *British Journal of Political Science* 27 (1). Cambridge University Press. (1997): 3.

³⁶⁰ Berry, Jeffrey M., and Sarah Sobieraj. *The outrage industry : political opinion media and the new incivility*. Oxford New York: Oxford University Press. (2014): 190-200.

objective, people are not. Media coverage of politics today cloaks profit-driven obsession with scandal and controversy under the guise of objectivity. This is not to suggest there should be any limitation on the First Amendment rights of journalists. Indeed, there is no obvious or straightforward solution to this problem, but one place to start is to cast off the notion that there is such a thing as objectivity among journalists.

Just as the First Amendment must remain sacrosanct for journalists, it must also protect the activities of persons wishing to petition their government. This chapter reveals that efforts purported to diminish the influence of professional lobbyists—such as the Honest Leadership and Open Government Act—have only served to concentrate and enhance the influence of the most well financed and organized interests. Not only is it contrary to the spirit of the First Amendment to regulate the ability of people to advocate for their interests, the current regulatory regime harms public trust in the institution. If there is a problem with lobbying in Washington, DC, it is not that there are too many lobbyists in the halls of Congress; it is that not everyone is represented. The system of regulating lobbying makes it harder for smaller groups with fewer resources to be engaged in the political process in a meaningful way. Furthermore, President Obama's prohibition against lobbyists serving in his Administration has simply driven a large portion of the advocacy industry underground, which surely does not contribute to the stated goal of increasing public disclosure of these activities.

Kingdon's theory based on his field research in the 1970s is bolstered by Drutman's recent treatise on the true role of lobbyists in Washington, along with Allard's spirited advocacy for the public service of the lobbying occupation. All

conclude that lobbyists maintain an important agenda-setting role in Washington.³⁶¹

Furthermore, the examples laid out in the first two chapters of this thesis support their conclusions that lobbyists play an important role in the legislative process. In the PTC examples, lobbyists were essential to raising the alarm that the deadline would need to be extended and garnering support for a workable extension. In the gas tax example, lobbying by conservative groups has influenced decisions to avoid raising the tax. And in the truck weight example, lobbyists from the trucking industry successfully got their policy item on the agenda, only to lose a key vote after an overwhelming lobbying press by opposing interests. The key lesson is that the role of lobbyists is substantial and should be embraced rather than vilified, so that more voices and perspectives are involved in setting the agenda.

It is no surprise that members of Congress find few opportunities to collaborate to advance legislation these days. Not only do their political constituencies not overlap, they hardly ever see each other in person. There is no straightforward way to measure the impact of so few members living and working in Washington full time, but anecdotal reports indicate it has a real effect.

Addressing any of these issues will require dedicated leadership from all of the stakeholders: the President, Congressional Leadership, and influential members of the private sector that have an interest in having a functioning Legislative Branch.

³⁶¹Drutman, Lee. *The business of America is lobbying : how corporations became politicized and politics became more corporate*. Oxford New York, NY: Oxford University Press. (2015): 220; Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 95-97; Allard, Nicholas, W. "Lobbying is an Honorable Profession: The Right to Petition and the Competition to be Right". *Stanford Law and Policy Review*. Vol. 19 (2008): 38

Politics is complicated; so is determining how to reform public institutions like the U.S. Congress. Countless variables come together to form legislative policy outcomes. This thesis portfolio demonstrates the utility Kingdon's theory of focusing events as key motivators for Congressional action, along with his and others' conclusion that political vulnerability among Congressmen makes them hesitant to take political risks unless absolutely necessary. Knowledge of this theory should inform leaders in American business, public service as they seek to enhance the ability of the First Branch of government to respond to important public policy matters in a timely, effective manner.

Conclusions and Suggestions for Additional Research

“Change may come because of a horrendous crisis (i.e. the Abramoff model), which would reinforce the idea that the problem is corruption. Or maybe if there is a party changeover—as occurred in 1995 when the Lobbying Disclosure Act was enacted. But most likely change will occur if there is a broader, omnibus congressional reorganization package to restructure the institution, and lobbying issues are included in that bill. This seems to occur every 20 years or so; maybe it’s time.”³⁶² –Lee Drutman

This portfolio offers significant but limited insight into an extremely complex process of determining when an idea’s time comes. Needless to say, not every angle of this subject is covered in the above discussion. However, several conclusions are obvious. The first is that Kingdon’s theory continues to hold strong predictive value as a tool for understanding how Congress operates. Obviously, it is an imprecise tool, but therein lays its utility and it does not pretend to be otherwise.

The theory would have predicted a rapid, disproportionate response to the 2008 railroad accident in California. Importantly, it would have accurately predicted that the response would be based more on short-term political expediency than on long-term policy objectives. As chapter one demonstrates, if the goal was to enhance rail safety, then the PTC mandate as enacted was irrational. The theory also observes that when political expediency and the drive to act in the midst of a crisis overwhelm the desire to get the policy right, implementation problems are almost inevitable. The first chapter’s discussion of the interagency coordination and technological tribulations that eventually led to a delay of the PTC implementation deadline is yet another proof point for the

³⁶² Drutman, Dr. Lee. Interview with Harrison Wadsworth. Personal Interview. Washington, DC. June 16, 2016.

value of the theory. In other words, the one time the Congress expended considerable political bandwidth addressing an important rail transportation safety issue in the past decade, it fumbled the outcome.

Equally important as when the Congress overreacts to a perceived crisis is when it does nothing despite the existence of a crisis. The second chapter finds that Kingdon's theory aligns with two federal highway policy outcomes in recent years. The Congress's refusal to increase federal excise taxes on gasoline—despite a steady decline in purchasing power of the non-inflation adjusted tax while the need for infrastructure investment mounts—is a confirmation of the notion that the Congress will not respond to a slow crisis. An issue needs to be exciting for Congress to act; a slow daily commute does not get attention like a train wreck. Kingdon's theory also holds that the Congress will only respond to a crisis if there is an acceptable policy option on its agenda. An examination of the degree to which members of the House and Senate are politically vulnerable—or at least believe themselves to be politically vulnerable—informs an understanding of why the Congress in 2015 chose to fund highway programs for five years with non-transportation sources. It also explains why they have resisted calls from well established representatives of the trucking and agriculture industries to increase federal highway truck weight limits.

Clearly, one should not simply accept that our national legislative body is incapable of making rational policy decisions. Imagine trying to literally run a railroad when the Congress suddenly sends you and your colleagues a \$10 billion bill to install a

technology system that is not even for sale and will only prevent a tiny fraction of potential accidents. Perhaps it is unreasonable to expect a democratic institution to not respond to the occasional passionate whims of the public, or to hope that the politicians elected to serve in it will not take advantage of every opportunity to improve their standing with their constituencies. But at the very least, those with a vested interest in public policy outcomes should consider the available options to make it more likely the Congress will respond to the demand placed on it as a political institution with the best available policy.

To that end, the third chapter concludes that such a discussion must consider the most relevant contributing factors to dysfunction: issues related to how Congressional districts are apportioned; the capacity of the Congress and its personnel to identify good policy choices; how to operate in a media climate that values the show horse over the work horse; how excessive and irrational restrictions on First Amendment protections influence the Congressional agenda; and how difficult it must be for politicians who do not know each other to find opportunities for compromise.

Design Limitations and the Need for Additional Examples

This portfolio examines only one example of impulsive Congressional activity in the wake of a focusing event, and two examples of inaction on policy. Ideally, future research should test the Kingdon theory against a randomly generated sample of policies to gain a better understanding of its validity and predictive power. Doing so would also offer opportunities to evaluate what Kingdon acknowledges as a limitation

of his theory: it helps us predict when there will be action, but it is essentially agnostic as to whether the outcome will be favorable or unfavorable to those who placed an issue on the agenda in the first place.³⁶³

Substantive Issues In Need of Further Examination

The Earmark Ban

Based on the interviews conducted for this research, the one subject missing from the above discussion is the contribution of the earmark ban to institutional dysfunction. Perhaps lobbying's only competition for the prize for the subject with the most unfounded, irrational public scorn is earmarks. As one former staffer put it, "The earmark ban means members of Congress have no buy-in into the process. It makes passing bills so much harder."³⁶⁴ Another shared a similar sentiment, that "Earmarks allow people who know a community best to direct spending accordingly. Even though the House is dysfunctional, the members know their districts very well."³⁶⁵ It was not immediately obvious to the author how much of a role the earmark ban may play in contributing to the Congress operating in fits of impulsivity followed by lulls of inactivity. However, almost every interview participant identified the earmark ban as a continuing factor to the decline of regular order and congeniality in the institution.

Unfortunately, these interviews were conducted late in the writing process due to

³⁶³ Kingdon, John W. *Agendas, Alternatives, and Public Policies*. New York: Longman. (1995): 1-3.

³⁶⁴ Former G.W. Bush White House and House Republican Staffer and Currently Registered Lobbyist. Interview with Harrison Wadsworth. Personal Interview. Spoke on condition of anonymity. Washington, DC. June 15, 2016.

³⁶⁵ Current House Democratic Member Personal Staffer. Spoke on condition of anonymity. Washington, DC. June 17, 2016.

bureaucratic delays with University's Institutional Review Board, leaving little time for complete research of the topic. the A future version of this paper must include a comprehensive discussion of this as a contributing factor to gridlock.

The Decline of Decorum in Washington and Friendship Among Elected Officials

The above discussion how the lack of professional and social interaction by members of Congress today might contribute to the low levels of collaboration among members of different political parties is very much constrained by a lack of research in this area. Furthermore, any formal examination of this question would be plagued by methodological problems. Not only is it likely impossible to quantify social interaction levels—especially in a historical sense—the changes observed occurred over a period of decades, while other aspects of American life and society changed as well. That is not to say it is not worth trying to understand this phenomena, but formal research into this subject will likely always be limited to anecdotal accounts, which are bound to be inadvertently revised by anyone recalling those “good old days” when the system worked better.

Lessons Learned

The overarching implication of validity of Kingdon's theory of Congressional activity being driven by focusing events is simple: Congress is mostly likely to act only on major issues in a crisis, and when it does act, it probably won't be anything close to an ideal policy response. For transportation policy, this theoretically means people have

to be hurt or killed for the Congress to take notice. If the problem is only likely to make people miserable on a daily basis, as is the case with underfunded highway and transit systems, the Congress will typically allow problems to fester until they eventually get attention. Again, in a safety-critical industry like transportation, this usually means people dying, as occurred on the D.C. Metro system recently. The one hope for the future that can be taken from all of this is that maybe the transportation \$100 billion “fiscal cliff” of 2020 will foster a constructive, rational dialog and policy response to the transportation program funding question.

Perhaps it is naive to think any purposeful intervention could bring institutional change. After all, the previous chapters are about how unexpected events lead to most Congressional activity. But we should not forget that each of the contemporary policies that exacerbate the Congress’s tendency towards fits of activity or total stasis can be reversed. Kingdon teaches us that we had better have our policy proposal on the agenda *before* an event makes it politically convenient to enact it. The lesson is that we must make sure any suggestions for changes to these policies are legitimized and taken seriously well ahead of any crisis. In other words, thought leaders in this country with influence over Congressional activity should keep Kingdon’s theory in mind and work to get these issues “in the kitchen” so that they are “on the menu” of acceptable policies when a relevant focusing event occurs.

There is a high level of political discontent in America today. Most people have little to no faith in their government, but they do not know what to do about it. They

want to change this system, but do not think about the consequences of changing that system. Instead, they simply want to put a proverbial stick in the spoke and see what happens. They think the best tool to get this right is a hammer, without realizing how incredibly nihilistic that is. Just about any other possible system for making changes would be better than destruction. The lesson from this thesis to take home, to the Board Room, or the Committee room, is that if you want your preferred alternatives to be on the agenda, you had better be ready when the time comes.

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Curriculum Vitae

Harrison M. Wadsworth, IV earned a Bachelor of Arts in Political Science and a Minor in Music from The Johns Hopkins University in 2008. He then worked for a Democratic Member of the House of Representatives, covering transportation issues. Harrison next joined the Association of American Railroads Government Affairs Department, where he spent six years as an advocate for the rail industry before the U.S. Congress. In April 2016, he joined Siemens Corporation as a Government Affairs Director.

He is on the Board of Directors of the Jefferson Islands Club, a nonpartisan Club supporting civil discourse in Washington and the preservation of the resources of the Chesapeake Bay watershed. In 2011, he earned a Bronze Medal at a regional power lifting competition, with a 1206 lb. total across three lifts. Harrison was born in Washington, DC in September 1986 and grew up in Derwood, MD, where he attended public grade schools. He lives in Arlington, Virginia with his inspiring wife, Lisa. Harrison is an Eagle Scout with a lifelong passion for the outdoors, reminding you to be prepared, always take care of your body, maintain a positive outlook, and be conservation-minded.